

2004

3D Construction and Development, LLC v. Old Standard Life Insurance Co., Ocwen Federal Savings Bank FSB and Paxton R. Guymon : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

3D CONSTRUCTION AND
DEVELOPMENT, LLC

Plaintiff / Appellant,

vs.

OLD STANDARD LIFE INSURANCE
CO., OCWEN FEDERAL SAVINGS
BANK FSB and PAXTON R.
GUYMON, as successor trustee

Defendants / Appellees.

**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 20040250-CA**

Case No. 20040250-CA

BRIEF OF APPELLANT 3D CONSTRUCTION AND DEVELOPMENT, LLC

THIS IS AN APPEAL FROM A JUDGMENT IN THE
FIRST JUDICIAL DISTRICT IN AND FOR BOX ELDER COUNTY,
STATE OF UTAH
THE HONORABLE BEN H. HADFIELD

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**FILED
UTAH APPELLATE COURTS**

DEC 14 2004

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IN THE UTAH COURT OF APPEALS

<p>3D CONSTRUCTION AND DEVELOPMENT, LLC</p> <p>Plaintiff / Appellant,</p> <p>vs.</p> <p>OLD STANDARD LIFE INSURANCE CO., OCWEN FEDERAL SAVINGS BANK FSB and PAXTON R. GUYMON, as successor trustee</p> <p>Defendants / Appellees.</p>	<p>Case No. 20040250 CA</p>
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STATEMENT OF JURISDICTION

This court has jurisdiction of this appeal pursuant to Utah Code Ann. §78-2-2(3)(j) (1953 as amended), Utah Code Ann. §78-2-2(4), Utah Code Ann. §78-2a-3(2)(j) (1953 as amended) and Utah Rule of Civil Procedure 54(b).

STATEMENT OF THE ISSUES

1. Are 3D's claims regarding the amount of the debt and its agreements with Old Standard and Ocwen barred by the doctrine of judicial estoppel as a result of the bankruptcy schedules?
2. Are 3D's claims regarding the amount of the debt and its agreements with Old Standard and Ocwen barred by the doctrine of collateral estoppel (issue preclusion) as a result of 3D's failure to respond to the motion for relief from the automatic stay in the bankruptcy court?

Both of these issues were decided by the trial court on summary judgment. The standard of review for both issues is therefore correctness. See Salt Lake City v. Silver Fork Pipeline Corp., 913 P.2d 731, 732 (Utah 1995).

STATEMENT OF DETERMINATIVE LAWS

Both judicial estoppel and collateral estoppel (issue preclusion) are doctrines created by the courts. There are therefore no determinative constitutional provisions, statutes, ordinances or rules in this matter.

STATEMENT OF THE CASE

This case arises out of a loan which 3D Construction and Development (“3D”) received from Old Standard Life Insurance Company (“Old Standard”). The loan was in the amount of \$3,900,000 and was secured by a trust deed on property 3D owned in Box Elder County, Utah. When 3D attempted to repay the loan, Old Standard and its loan servicer, Ocwen, improperly added \$2,000,000 in “profit participation” fees. When 3D objected to the addition of these fees, Old Standard began foreclosure proceedings on the property.

In order to stop the foreclosure proceedings, 3D filed a Chapter 7 bankruptcy, although that bankruptcy was ultimately dismissed. At the commencement of the bankruptcy, 3D filed schedules and listed Old Standard as a creditor. The schedules listed the amount of the debt as \$6,100,000, which was the amount Old Standard claimed it was owed instead of the amount which 3D believed it owed. The schedules did not indicate that the debt was contested.

During the pendency of the bankruptcy, Old Standard filed a motion for relief from the automatic stay and claimed that it was owed approximately \$6,100,000. Because 3D was aware that the bankruptcy was going to be dismissed, it did not respond to the motion for relief from the automatic stay.

After the bankruptcy was dismissed, Old Standard resumed its foreclosure proceedings and 3D commenced an action to halt the foreclosure on a number of theories relating to the addition of the “profit participation” to the amount of the loan, including that the “profit participation” was an illegal penalty.

Old Standard moved for summary judgment in the trial court on the basis that the statement of the debt in the bankruptcy schedules was a judicial admission and that 3D’s failure to respond to the motion for relief from the automatic stay meant that res judicata applied. Old Standard claimed that both of these theories prohibited 3D from raising any argument regarding the amount of the debt 3D owed to Old Standard. The trial court granted the motion for summary judgment.

STATEMENT OF RELEVANT FACTS

1. On October 25, 2001, Old Standard made a loan to 3D in the amount of \$3,905,000. R. at 0005. A copy of the promissory note is located at R. 0031 to 0032 and attached as Exhibit “A” in the addendum.

2. The loan was secured by a trust deed on several parcels of property which 3D owned in Box Elder County. R. at 0005. A complete copy of the trust deed is located at R. 0464 to 0484 and attached as Exhibit “B” in the addendum.

3. The promissory note contained provisions for “profit participation,” which were amounts 3D would have to pay to Old Standard, depending on how long it took 3D to repay the loan. R. at 0031 Profit Participation Agreement paragraph; Exhibit “A.”

4. If 3D paid off the loan by January 31, 2002, it would pay profit participation of \$250,000. If 3D paid off the loan between February 1, 2002 and April 30, 2002, it would pay profit participation of \$1,000,000. If 3D paid the loan on May 1, 2002 or later, it would pay profit participation of \$2,000,000. R. at 0031 Profit Participation Agreement paragraph; Exhibit “A.”

5. The note also provided that if 3D defaulted on the note or on any of its other obligations to Old Standard, it would pay profit participation of \$2,000,000. R. at 0031 Profit Participation Agreement paragraph; Exhibit “A.”

6. In December, 2001, 3D arranged for financing to pay off the loan in January, 2002. Verified Complaint at ¶19; R. at 0006.

7. 3D’s title company began contacting Old Standard and its loan servicer to obtain a payoff figure for the loan. Verified Complaint at ¶¶20-21; R. at 0006-0007.

8. Old Standard’s loan servicer did not provide a payoff figure for the loan until the middle of January, 2002. Verified Complaint at ¶¶21-23; R. at 0007.

9. When Old Standard’s loan servicer finally provided a payoff figure for the loan, it included the \$2,000,000 in “profit participation,” which 3D would owe if it was in default. Verified Complaint at ¶23; R. at 0007.

10. Old Standard's loan servicer also informed the title company that the loan was in default. Verified Complaint at ¶24; R. at 0007.

11. 3D contacted Old Standard about the payoff figures which Ocwen had provided. Verified Complaint at ¶27; R. at 0007.

12. Old Standard admitted that Ocwen had been wrong to include the "profit participation" in the payoff figure and to inform the title company that the loan was in default. Verified Complaint at ¶28; R. at 0007.

13. Old Standard agreed to extend the time for paying off the loan with only \$250,000 in profit participation until February 15, 2002. Verified Complaint at ¶29; R. at 0008.

14. Old Standard also agreed to instruct Ocwen not to inform prospective investors that 3D was in default. Verified Complaint at ¶30; R. at 0008.

15. When 3D requested another payoff figure, however, Ocwen once again included \$2,000,000 in profit participation and informed the title company that the loan was in default. Verified Complaint at ¶32-33; R. at 0008.

16. In April of 2002, Old Standard appointed a successor trustee who began foreclosure proceedings against 3D. Verified Complaint at ¶38; R. at 0009.

17. The successor trustee scheduled a sale of the property for September 27, 2003. Memorandum in Support of Old Standard's Motion for Summary Judgment at ¶9; R. at 0444-0445.

18. On September 25, 2003, 3D filed a voluntary Chapter 7 bankruptcy. Id.; R. at 0444-0445.

19. At the time that 3D filed the bankruptcy, it also filed schedules. Id., at ¶10; R. at 0445. A copy of the schedules is located in the record R. at 0502-0519 and attached as Exhibit “C” in the addendum.

20. The schedules listed Old Standard as 3D’s sole creditor and listed the amount of the debt as \$6,500,000. R. at 0513; Exhibit “C” at Schedule D.

21. The schedules did not indicate that the amount of the debt was contested. R. at 0513; Exhibit “C” at Schedule D.

22. On November 6, 2002, Old Standard moved for relief from the automatic stay. Memorandum in Support of Old Standard’s Motion for Summary Judgment at ¶11; R. 0445. A copy of this motion is located at R. 0521-0526, and attached as Exhibit “D” in the addendum.

23. 3D did not respond to the motion for relief from the automatic stay. Memorandum in Support of Old Standard’s Motion for Summary Judgment at ¶12; R. at 0445.

24. The bankruptcy court granted the motion for relief from the automatic stay. Memorandum in Support of Old Standard’s Motion for Summary Judgment at ¶12; R. at 0445. A copy of the bankruptcy court’s order is located at R. 0528-0530 and attached as Exhibit “E” in the addendum.

25. The successor trustee scheduled a trustee's sale on January 3, 2003. Memorandum in Support of Old Standard's Motion for Summary Judgment at ¶13; R. at 0445.

26. On January 7, 2003, 3D filed a verified complaint in the First Judicial District Court in Box Elder County. This was accompanied by a motion for a preliminary injunction to halt the trustee's sale. The verified complaint is located at R. 0001 through 0022. The motion for a preliminary injunction is located at R. 0049 through 0062.

27. As a result of the filing of the verified complaint and the motion for a preliminary injunction, the trustee postponed the trustee's sale until January 20, 2003. Memorandum in Support of Old Standard's Motion for Summary Judgment at ¶13; R. at 0445.

28. The court held a hearing on the motion for a preliminary injunction on January 15, 2003 and issued a memorandum decision denying the motion for a preliminary injunction on January 17, 2003. R. at 0346-0347.

29. On June 23, 2003, Old Standard filed a motion for summary judgment on three bases: judicial estoppel, claim preclusion, issue preclusion and law of the case. R. at 0439-0458.

30. The trial court held a hearing on the motion for summary judgment (which was amended to a motion for partial summary judgment at the stipulation of the parties) on October 9, 2003. R. at 0663-0666.

31. On November, 13, 2003, the trial court issued a memorandum decision granting the motion for partial summary judgment. The trial court found that claim preclusion and law of the case did not apply, but that judicial estoppel and issue preclusion applied. The trial court also indicated that its decision was final for purposes of Rule 54(b), Utah Rules of Civil Procedure. A copy of this memorandum decision court's order is located at R. 0677-0687 and attached as Exhibit "F" in the addendum.

32. The trial court signed an order granting the motion for partial summary judgment and certifying its decision under Rule 54(b) on February 18, 2004. R. at 0700-702.

33. 3D filed its notice of appeal on March 8, 2004. R. at 706-708.

SUMMARY OF THE ARGUMENT

The trial court granted summary judgment on two bases: first, the trial court believed that, because 3D had not indicated in its schedules that the amount of the debt to Old Standard was contested, 3D was judicially estopped from litigating the amount of the debt. Second, the court believed that, because 3D had had an opportunity to litigate the amount of the debt in the motion for relief from the automatic stay, the issue preclusion branch of res judicata prohibited 3D from litigating the amount of the debt. Both of the trial court's conclusions are incorrect.

The bankruptcy schedules are "**in no proper sense, res judicata, either as to creditors or the bankrupt.**" Gutierrez v. Mbank The Woodlands, N.A., 761

S.W.2d 853, 855 (Tex. App. 1988) (quoting Horner v. Hamner, 249 F. 134, 137 (5th Cir. 1918)).

Under Utah law, judicial estoppel only applies to statements made in a “prior judicial proceeding between the same parties.” A bankruptcy in general is not an adversarial proceeding, so 3D’s filing of bankruptcy did not commence a “judicial proceeding between” 3D and Old Standard, and the schedules were not statements made in the proceeding. Later, Old Standard did commence a “judicial proceeding between the same parties” when it filed a Motion for Relief from Stay, but 3D made no statements in that proceeding.

Under Utah law, judicial estoppel only applies to a “prior position” which was “successfully maintained” to the prejudice of the other party. 3D did not intend to dispute either the amount or the basis of the Old Standard debt *in the bankruptcy*. Even if the bankruptcy filing is somehow seen as a judicial proceeding between the parties, 3D’s bankruptcy was not “successfully maintained” because it was dismissed.

Under Utah law, judicial estoppel only applies to inconsistent positions taken by a party in prior action. The \$6,500,000 listed in the bankruptcy schedules as the amount of Old Standard’s claim is consistent with the amounts Old Standard claimed, and continues to claim, in the trial court. The schedules asked for a list of creditor “claims” not for sums 3D felt were legally justified.

In addition, Old Standard has misstated and confused the Utah law on issue preclusion. The Utah law of issue preclusion requires that “the issue decided in the prior

adjudication must be identical to the one presented in the instant action.” The issue in the bankruptcy action commenced by Old Standard was whether 3D had equity in the property. Before the trial court, 3D was seeking a ruling that it was not in default under its contract with Old Standard and a judicial declaration that the \$2,000,000 “participation fee” is invalid as a matter of state law. These are not identical issues.

Furthermore, the Utah law of issue preclusion requires that “the issue in the first action must have been completely, fully, and fairly litigated.” Old Standard concedes that 3D defaulted in the action for relief from the stay, and did not litigate the issue. A default is insufficient under Utah law to create collateral estoppel.

ARGUMENT

I. THE DOCTRINE OF JUDICIAL ESTOPPEL DOES NOT APPLY TO THE DESCRIPTION OF 3D’S DEBTS IN THE BANKRUPTCY SCHEDULES.

The trial court’s first basis for granting summary judgment was that the doctrine of judicial estoppel prevents 3D from denying that its debt to Old Standard is anything less than the \$6,500,000 shown on 3D’s bankruptcy schedules. The trial court’s conclusion misconstrues both Utah law on judicial estoppel and the effect of the bankruptcy schedules.

A. The Doctrine of Judicial Estoppel as Established by Utah Courts Does Not Apply to this Action.

Utah law on judicial estoppel was established in Tracy Loan & Trust Co. v. Openshaw Inv. Co., 102 Utah 509, 132 P.2d 388 (1942), in which the court stated: “a

person may not, to the prejudice of another person, deny any position taken in a prior judicial proceeding between the same persons or their privies involving the same subject matter, if such prior position was successfully maintained.” Id. at 390.

This formulation of judicial estoppel has been in effect for more than 60 years and the Utah Supreme Court has reaffirmed it as recently as 2001. See Nebeker v. State Tax Commission, 2001 UT 74, 34 P.3d 180 at ¶26.

Pursuant to Tracy Loan & Trust, a party must establish five elements in order to assert judicial estoppel: 1) that there was a prior judicial proceeding between the same parties or their privies, 2) that the opposing party took a specific position in the prior proceeding, 3) that the position the party took in the prior proceeding is different from its position in the current proceeding, 4) that the party’s position in the prior proceeding was successful, and 5) that the change in position is prejudicial to the person asserting the estoppel.

1. There was no judicial proceeding between these parties.

In this matter, Old Standard has failed to establish the elements of judicial estoppel. Old Standard has not established that there was a prior judicial proceeding between these parties or their privies. Although bankruptcy involves judges and filings in court, the mere filing of a bankruptcy cannot be considered a judicial proceeding “between parties.” Instead, bankruptcy is a unilateral declaration by a party that it is unable to meet its obligations and has submitted its affairs to the bankruptcy court for

administration. A bankruptcy petition does not become adversarial or “between parties” until one of the parties affected by the bankruptcy petition files an adversary proceeding. Rule 7701, Fed. R. Bankr. Pro. It is undisputed that this did not occur in this matter and there was no prior judicial proceeding between these parties.

2. 3D did not take a different position before the trial court than it took before the bankruptcy court.

In addition, Old Standard has not established that 3D took a position which is different from the position it was taking. As Kelly Dixon explained in an affidavit filed at the time the trial court was considering the preliminary injunction in this matter, 3D understood that it was to include in its schedules the amount that Old Standard claimed was due, not the amount that he believed was owed to Old Standard.¹ 3D still believes that Old Standard claims approximately \$6,500,000, but this does not mean that 3D agrees with this figure.

3. 3D’s bankruptcy was not successful.

Old Standard has also failed to establish that the position it claims 3D took in the bankruptcy was successful. Success in bankruptcy is different from success in a typical legal proceeding in which there is a winner and a loser. The United States Supreme Court has defined the purposes of bankruptcy as follows:

It is the twofold purpose of the Bankruptcy Act to **convert the estate of the bankrupt into cash and distribute it among creditors** and then

¹See Affidavit of Ronald Kelly Dixon, dated January 16, 2003. R. at ____.

to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched.

Burlingham v. Crouse, 228 U.S. 459, 473 (1913).

Although the Bankruptcy Act has been superseded by the Bankruptcy Code, the purpose of bankruptcy has not changed since 1913. See 9 Am.Jur 2d Bankruptcy §5 (1991), which cites Burlingham in describing the goal of bankruptcy.

Under this definition, 3D's bankruptcy filing was not successful. Although as a legal entity, 3D was not entitled to a discharge, it was still entitled to have its estate converted to cash and distributed to its creditors. This did not occur. 3D's position cannot therefore be considered to have been successful and judicial estoppel does not apply. See Stevensen v. Goodson, 924 P.2d 339, 352-53 (Utah 1996) (refusing to apply judicial estoppel to prevent a party from changing his estimate of property's value where a bankruptcy court judge had rejected the earlier estimate.)

4. Old Standard has shown no prejudice from 3D's contesting of the amount of the debt.

In addition, Old Standard has shown no prejudice which would result by allowing 3D to assert a different amount of the debt in this matter than the amount shown on the bankruptcy schedules. In fact, Old Standard did not rely on the bankruptcy filing at all and demanded the lifting of the bankruptcy stay so it could go forward with its foreclosure. This would also have allowed the parties to litigate the matter in the state courts. Now Old Standard wants 3D stripped of all its defenses in the state action while Old Standard fights on with all its claims intact.

If 3D is allowed to adopt a position different from that taken in its schedules, Old Standard's ability to prove the amount of its debt will not be affected. Old Standard has not alleged that any evidence which was available at the time of the bankruptcy filing is now missing or unavailable. In fact, Old Standard failed to address the issue of prejudice at all before the trial court. In fact, there are still claims before the trial court in which Old Standard ignores the declarations in the bankruptcy completely.

B. There Is No Estoppel Without Reliance or When Each Party Had Access to the Evidence.

In Tracy Loan & Trust Co., the Utah Supreme Court stated: “**there is no estoppel where there was no reliance and the parties had equal knowledge of the facts.**” Tracy Loan & Trust Co. 132 P.2d at 390-91 (Utah 1942). This concept was amplified in 1996 when the Utah Supreme Court described the purpose of judicial estoppel as follows:

The purpose of judicial estoppel is to uphold the sanctity of oaths, thereby safeguarding the integrity of the judicial process from conduct such as knowing misrepresentations or fraud on the court. . . . **this purpose is not served in cases such as this where there is no evidence that the party against whom judicial estoppel is sought knowingly misrepresented any facts in the prior proceeding and where the party seeking to invoke judicial estoppel had equal or better access to the relevant facts.**

Jones, Waldo, Holbrook & McDonough v. Dawson, 923 P.2d 1366, 1371 (Utah 1996) (internal citations and quotations omitted). Pursuant to this statement by the Court, this court should not apply the doctrine of judicial estoppel unless Old Standard introduces evidence of that it did not have access to evidence showing the actual amount of the debt,

that 3D made knowing misrepresentations and that Old Standard relied on 3D representations.

1. Old Standard had at least equal access to the facts of this matter.

In this case, Old Standard had access to all of the facts and evidence in this matter. It had kept the original note and maintained its own records on this loan. It determined the amount due on the debt without relying on 3D's representations. In fact, when it came time to calculate the payoff amounts for the loan, 3D had to obtain that information from Old Standard. Applying judicial estoppel in this context would violate the doctrine of judicial estoppel and the trial court erred in applying that doctrine in this matter.

2. Old Standard has presented no evidence that 3D made knowing misrepresentations.

Old Standard has presented no evidence that 3D has knowingly misrepresented the amount of the debt in the bankruptcy or in this matter. 3D's representative testified that in filling out the bankruptcy schedules, they thought that they were to indicate the amount the creditor thought was due, the amount of the "claim." Old Standard presented no evidence contradicting this testimony. At most, Old Standard has shown that 3D was careless in completing the bankruptcy schedules. This is insufficient to meet the Supreme Court's requirement. Old Standard must show that there was a knowing misrepresentation.

3. Old Standard did not rely on 3D's representations.

In order to prevail on a claim of judicial estoppel, Old Standard must also show that it relied on 3D's misrepresentations. Old Standard presented no evidence that it relied on representations made by 3D. Instead, all of the evidence in this matter indicates that Old Standard never accepted 3D representations. There was no reliance and the trial court erred in applying the doctrine of judicial estoppel.

II. THE TRIAL COURT MISAPPLIED UTAH LAW OF COLLATERAL ESTOPPEL.

The trial court's second basis for entering summary judgment against 3D was that it believed that the 3D was prohibited from litigating the amount of the debt it owed to Old Standard under the "issue preclusion" branch of *res judicata*. This was based on 3D's failure to respond to Old Standard's Motion for Relief from the Automatic Stay in the bankruptcy court. The trial court found that this failure barred it from considering 3D's arguments about the propriety of Old Standard's actions in adding the \$2,000,000 in "profit participation" to the debt. In arguing its position, Old Standard cited the correct Utah rule, but then argued the opposite rule, and supported its argument with citations to federal and state cases outside of Utah which give a different meaning to "collateral estoppel" than that followed by Utah courts.

A. The Utah Supreme Court Follows the Modern Trend of Res Judicata Analysis with Separate Rules for "Issue Preclusion" and "Claim Preclusion."

The Utah Supreme Court analyses *res judicata* this way:

The doctrine of *res judicata* has two branches, claim preclusion and issue preclusion. As the United States Supreme Court has noted, there has been a

great deal of confusion with respect to the “varying and, at times, seemingly conflicting terminology” used in discussing the doctrine and its two branches. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 77, 79 L. Ed. 2d 56, 104 S. Ct. 892 n.1 (1984). **Much confusion has resulted from the use of the term “res judicata” to refer to either claim preclusion alone or to the overall doctrine, incorporating both claim and issue preclusion. To avoid engendering further confusion, we will use “res judicata” to refer to the overall doctrine of the preclusive effects to be given prior judgments. We will use the term “claim preclusion” to refer to the branch which has often been referred to as “res judicata” or “merger and bar.” And we use the term “issue preclusion” to refer to the branch often termed “collateral estoppel.”** See the discussions in Penrod v. Nu Creation Creme, Inc., 669 P.2d 873, 874-75 (Utah 1983), Mel Trimble Real Estate v. Monte Vista Ranch, Inc., 758 P.2d 451, 86 Utah Adv. Rep. 29, 30 (Utah App. 1988), and Lane v. Honeywell, Inc., 663 F. Supp. 370, 371 n.1, 372 & n.2 (D. Utah 1987). See generally F. James & G. Hazard, Civil Procedure § 11.3 3d ed. 1985); C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure: Jurisdiction § 4402 (1981).

Noble v. Noble, 761 P2d 1369, 1375 n. 5 (Utah 1988)(emphasis added)

Utah follows a modern trend in adopting this analysis. 46 Am. Jur. 2d. Judgments, §517 (1994).

B. The Issue in this Matter Is Issue Preclusion.

The trial court based its decision on its application of the doctrine of “issue preclusion.” Under Utah law, issue preclusion or collateral estoppel requires four elements.

First... the issue challenged in the case at hand is identical to the issue decided in the previous action. Second, the issue in the previous action must have been decided in a final judgment on the merits. Third, the issue in the previous action must have been competently, fully, and fairly litigated. Fourth, the opposing party in the action at hand must have been either a party or privy to the previous action.

Stevensen v. Goodson, 924 P2d 339, at 353 (Utah 1996).

This is the controlling law.

C. Under Utah Law, Issue Preclusion Applies Only to Issues Actually Litigated.

Utah rules of collateral estoppel only prevent consideration of issues which were *actually litigated* in the prior action. This is the real difference between “collateral estoppel” (issue preclusion) and “res judicata” (claim preclusion).

Issue preclusion arises in a second action on the basis of a prior decision when the same “issue” is involved in both actions; **the issue was “actually litigated” in the first action**, after a full and fair opportunity for litigation," and the issue was actually decided by a sufficiently final and valid disposition on the merits. 18 Charles A. Wright et al., Federal Practice and Procedure § 4416 (1981).

Jones, Waldo, Holbrook & McDonough v. Dawson, 923 P2d 1366 (Utah 1996)(refusing to give collateral estoppel effect to a determination of the reasonableness of attorneys fees in a collection action for the fees even though reasonableness issues could have been raised in a prior divorce action) (emphasis added).

But it is important to keep in mind this distinction between the rule of res judicata and that of collateral estoppel: while as indicated above, the former applies both as to issues which were actually tried and those which could have been tried in a prior action, the latter does not apply to issues that merely “could have been tried” in the prior case, but operates only to issues which were actually asserted and tried in that case.

International Resources v. Dunfield, 599 P2d 515, 517 (Utah 1979) (emphasis added).

D. The Utah Supreme Court Has Refused to Apply Collateral Estoppel to a Bankruptcy Ruling Where the Issue Was Not Actually Litigated and Decided.

In Timm v. Dewsnap, 851 P.2d 1178 (Utah 1993), the Utah Supreme Court considered the collateral estoppel effect of prior rulings from the bankruptcy court in Utah. The Dewsnums were farmers who had mortgaged their land to secure a debt. In the midst of a foreclosure attempt by the lenders, the Dewsnums filed bankruptcy twice to stall the foreclosure. The Dewsnums filed an adversary proceeding in the bankruptcy court to determine whether the foreclosure was proper. Both parties filed briefs on the foreclosure issue, and then the bankruptcy Trustee abandoned the Dewsnums' counterclaims against the creditors. The bankruptcy court's dismissed the adversary proceeding and entered a judgment of dismissal which "stated that the Dewsnums' adversary proceeding is dismissed in its entirety with prejudice, with no findings of facts or reference to the Dewsnums' claims." Id. at 1184. The Dewsnums then appealed the dismissal to the U.S. Supreme Court which ruled against them. Id. at 1185, footnote 1. Dewsnap v. Timm, 502 U.S. 410, 116 L. Ed. 2d 903, 112 S. Ct. 773 (1992).

In the state court action, the Dewsnums tried to amend their complaint to raise the counterclaims they had raised in the bankruptcy adversary proceeding. After "more than ten years" of proceedings (Timm v. Dewsnap, 851 P.2d at 1183) the trial court ruled that the Dewsnums counterclaims had already been decided and denied their motion to amend the complaint to add the counterclaims.

On appeal, the creditors argued that the Dewsnums were collaterally estopped from raising the issues of the counterclaim in the state court foreclosure action because they had been raised in the bankruptcy proceeding. The Utah Supreme Court reviewed the four

tests of collateral estoppel and the record of the bankruptcy court. It found that the issues had, in fact, been raised and briefed in the bankruptcy proceeding. However, the Utah Supreme Court found that the tests of collateral estoppel had not been met because it could not determine from either the bankruptcy record or the bankruptcy court's written judgment whether "the bankruptcy court ruled on the merits of this issue." Id. at 1184. Because the creditors had not carried their burden of showing actual consideration of the issue by the bankruptcy court, collateral estoppel was not proper. Id. at 1184. The Utah Supreme Court reversed the trial court, allowing the counterclaims by amendment.

The Utah Supreme Court repeated that, as to collateral estoppel in Utah,

"The party invoking this doctrine must demonstrate the following: (1) the issue involved in the subsequent action is identical to the issue decided in the previous action; (2) the issue was decided in a final judgment on the merits; (3) the issue was competently, fully, and fairly litigated in the first action; and (4) the party against whom the doctrine is invoked must be either a party to the first action or in privity with that party."

Id. at 1184.

This ruling is irreconcilable with the trial court's holding holding in this matter. The undisputed facts show that 3D's claims were not fully litigated in the bankruptcy court.

E. The issues before the trial court and the bankruptcy court were not precisely the same.

In examining whether issue preclusion applies, the Timm court also stated: "**We [must, therefore,] determine whether the issues actually litigated in the first action are precisely the same as those raised in the present action.**" Id. at

1341 (citing Wilde v. Mid-Century Insurance Co., Utah, 635 P.2d 417, 419 (1981) and In re Town of West Jordan, 326 P.2d 105 (Utah 1958)). The issues raised in the bankruptcy court are not the same as the issues raised in the action before the trial court.

The issues before the trial court were whether Old Standard acted properly in adding the \$2,000,000 “profit participation” to the amount that 3D owed under the note or whether Old Standard and its servicing agent violated their agreements with 3D and 3D’s rights by adding these amounts to the amount due under the note. In the bankruptcy court, the issues were whether there was “cause” to grant Old Standard relief from the automatic stay (11 U.S.C. §362(d)(1)(2004)) or whether

- (A) the debtor does not have an equity in such property; and
- (B) such property is not necessary to an effective reorganization

11 U.S.C. §362(d)(2) (2004).

Because the issues before the trial court and the issues before the bankruptcy court were different, the trial court erred in applying issue preclusion to 3D’s claims.

F. The Utah Supreme Court Does Not Give Collateral Estoppel Effect to a Default Judgment.

In jurisdictions which refuse collateral estoppel unless a “ the issue was competently, fully, and fairly litigated in the first action”, it follows from reason that the issue was not actually litigated if a judgment or order was entered by default.

The Bankruptcy Court’s Order Granting Motion for Relief from Automatic Stay was entered after 3D failed to appear and file a written response to Old Standard’s motion

to lift the stay. In a bankruptcy action, this is the equivalent of a default judgment on a complaint. See, e.g., In re Bystrek, 17 B.R. 894 (E.D. Penn 1982).

Because the Utah Supreme Court's rules of collateral estoppel require the claim to have been actually litigated, any decision not fully on the merits cannot bind a second court. The Court has said,

Default for inaction of a party involves no more discussion of the merits than a judgment based on jurisdiction. Both are matters of form rather than considerations of substance and legal rights. Since the judgment on the prior claim was based solely on the inaction of a party, that judgment was not based on the merits of the claim and therefore cannot be used to bar a second claim on the basis of collateral estoppel.

Utah State Department of Social Services v. Ruscetta, 742 P.2d 114, 116 (Utah 1987) (emphasis added). The Ruscetta court went further and stated: "Application of collateral estoppel to bar appellant's claim would violate the basic intent of the law to provide the parties a day in court." Id. at 117. The trial court therefore erred in finding that the proceedings in the bankruptcy court created collateral estoppel.


CONCLUSION

When 3D filed its bankruptcy schedules, it truthfully stated the amount Old Standard was claiming and also its intent not to dispute the debt in the bankruptcy. The filing created no action between the parties, the bankruptcy relief was never granted and Old Standard suffered no prejudice from the information given in the bankruptcy schedules. Therefore, the trial court erred when it held that the bankruptcy schedules

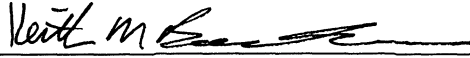
prevented it, under Utah rules of judicial estoppel, from fully and fairly considering 3D's claims.

When Old Standard commenced an action in the bankruptcy court, the bankruptcy court did not competently, fully, and fairly litigate the issues presented in the action which was before the trial court. In addition, the bankruptcy court lacked the authority to litigate some of the issues which were before the trial court. Because the bankruptcy court lacked power to consider those issues and did not fully litigate the issues which were before it, issue preclusion did not apply in front of the trial court and the trial court erred in granting summary judgment on that basis.

DATED this 11 day of December, 2004.



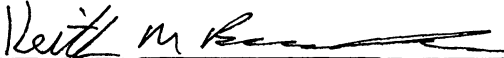
Jack C. Helgesen
Attorney for Appellant



Keith M. Backman
Attorney for Appellant

Certificate of Mailing

I hereby certify that on this 14 day of December, 2004, I mailed a true and correct copy of the foregoing brief to Blake Miller and Paxton R. Guymon, attorneys for appellee at: 170 S. Main Street, Suite 350, Salt Lake City, Utah 84101.



Exhibit

“A”

900401

PROMISSORY NOTE

Borrower: 3D Construction and Development, L.L.C.,
a Utah limited liability company
116 West 4600 South
Ogden, Utah 84405

Lender:

Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

Principal Amount: \$3,905,000.00

Interest Rate: 13%

Date of Note: 10-25-01

PROMISE TO PAY. 3D Construction and Development, L.L.C., a Utah limited liability company (referred to herein as "Borrower") promises to pay to Old Standard Life Insurance Company, an Idaho corporation ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Million Nine Hundred Five Thousand and 00/100 Dollars (\$3,905,000.00) together with interest on the unpaid principal balance from the date of disbursement until paid in full.

PAYMENT. Borrower will pay this loan in accordance with the following payment schedule:

Borrower will make eleven (11) monthly interest-only payments, commencing December 1, 2001, and on the first day for each succeeding month thereafter, with interest calculated on the unpaid principal balance at the fixed rate of thirteen percent (13%) per annum. The interest portion of any monthly installment payment shall be determined based upon a 360-day year and by computing thirty (30) days interest on the outstanding balance on the Note as of the scheduled monthly installment due date. Notwithstanding the foregoing, interest only for the partial calendar month following the date of funding shall be due and payable in advance on the date of Note funding. Such interest shall be deemed earned on said date, and shall not be deemed a payment on principal. Borrower's final payment due November 1, 2002 will be for all principal and all accrued interest not yet paid. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued interest, then to any unpaid collection costs and late charges, and any remaining amount to principal.

PROFIT PARTICIPATION AGREEMENT. As additional consideration for making this loan, in addition to the Note principal, interest, and origination fees, Borrower agrees to pay to Lender a profit participation amount in the event of full payoff of the principal amount of the Note as follows: (a) From the date of this Note through and including January 31, 2002, Borrower shall pay to Lender a profit participation amount equal to Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00); (b) From February 1, 2002, through and including April 30, 2002, Borrower shall pay to Lender a profit participation amount equal to One Million and 00/100 Dollars (\$1,000,000.00); and (c) From May 1, 2002, and thereafter, Borrower shall pay to Lender a profit participation amount equal to Two Million and 00/100 Dollars (\$2,000,000.00). Notwithstanding anything to the contrary herein, upon an event of default under this Note or under any other agreement executed in connection with this Note, Borrower shall immediately pay Lender a profit participation amount of Two Million and 00/100 Dollars (\$2,000,000.00). This profit participation agreement will survive Note maturity and full payment of the Note amount, and will continue to be secured by the Deed of Trust and Assignment of Rents executed in connection herewith until the profit participation amount is paid in full. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, they will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Old Standard Life Insurance Company, 601 W. 1st Ave., Dept. 171000, Spokane, Washington 99201.

MAXIMUM INTEREST RATE. Under no circumstances will the interest rate on this Note exceed (except for any higher default rate shown below) the maximum rate allowed by applicable law.

extend (repeatedly and for any length of time) this loan, or release any party or guarantor or collateral; fail to realize upon or perfect Lender's security interest in the collateral; or take any other action deemed reasonably necessary by Lender without the consent of or notice to anyone. If Borrower consists of more than one person or entity, all obligations of Borrower herein shall be joint and several, and all references to Borrower shall mean each and every Borrower. This means that each Borrower signing below is responsible for all obligations in this Promissory Note. It is not necessary for Lender to inquire into the powers of any of the parties hereto or of the officers, directors, partners, managers, members or agents acting or purporting to act on their behalf.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$15.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

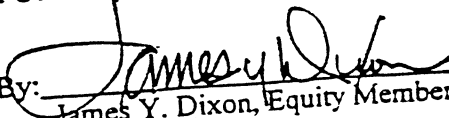
ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

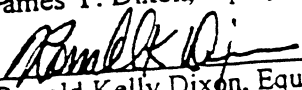
PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

3D Construction and Development, L.L.C.,
a Utah limited liability company

By: 
James Y. Dixon, Equity Member

By: 
Ronald Kelly Dixon, Equity Member

Exhibit

“B”

RECORDATION REQUESTED BY:

Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

158728 Bk 0778 Pg 0613
LuAnn Adams, Box Elder County Recorder
10/25/2001 4:18pm FEE: 70.00 Dep:M
Rec'd For: BACKMAN STEWART TITLE SER

WHEN RECORDED MAIL TO:

Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

SEND TAX NOTICES TO:

3D Construction and Development, L.L.C.,
a Utah limited liability company
116 West 4600 South
Ogden, Utah 84405

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

#20029276

DEED OF TRUST

THIS DEED OF TRUST IS DATED October 25th, 2001, among 3D Construction and Development, L.L.C., a Utah limited liability company, whose address is 116 West 4600 South, Ogden, Utah 84405 (referred to below as "Grantor"); Old Standard Life Insurance Company, an Idaho corporation, whose address is 601 W. 1st Ave., Dept. 171000, Spokane, Washington 99201 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Bachman Stewart Title Services, whose address is 1558 N. Woodland Park Drive, Suite 410, Layton, Utah 84041 (referred to below as "Trustee").

THIS DEED OF TRUST IS INTENDED ALSO AS A FIXTURE FILING AND IS TO BE INDEXED NOT ONLY AS A DEED OF TRUST BUT ALSO AS A FIXTURE FILING.

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all appliances, furniture and furnishings affixed to the real property; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, and all requisite approvals, licenses, permits, variances, cooperative agreements, tax credits (if applicable), tax abatement benefits (if applicable), and land-use entitlements, located in Box Elder County, State of Utah (the "Real Property"):

See Exhibit "A" attached hereto and by this reference incorporated herein.

Tax Identification Nos. 05-100-0003; 05-100-0012; 05-125-0004; 05-125-0016; 05-100-0037; 05-125-0011; 05-125-0012; 05-125-0022; 05-125-0008; 05-125-0013; 05-100-0041; 05-101-0001, 05-125-00

Grantor further conveys to Trustee in trust for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest to any and all water rights affecting the Property, including but not limited to, that water right in the Utah-Sugar Company Canal System for six acres and those water certificate numbers: 29596 and A29-1596 and 84, with any and all rights related thereto, including all pipelines, reservoirs, rights-of-way, structures, and improvements.

Grantor hereby assigns as security to Lender, all of Grantor's right, title, and interest in and to all leases, Rents, and profits of the Property. Lender grants to Grantor a license to collect the Rents and profits, which license may be exercised at Lender's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness. Lender further grants to Lender a security interest in all Personal Property.

DEFINITIONS. The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America

Beneficiary. The word "Beneficiary" means Old Standard Life Insurance Company, an Idaho corporation, its successors and assigns. Old Standard Life Insurance Company, an Idaho corporation, also is referred to as "Lender" in this Deed of Trust.

Borrower. The word "Borrower" means 3D Construction and Development, L.L.C., a Utah limited liability company. 3D Construction and Development, L.L.C., a Utah limited liability company is also referred to as "Grantor" herein.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Grantor. The word "Grantor" means 3D Construction and Development, L.L.C., a Utah limited liability company.

Guarantor. The word "Guarantor" means and includes without limitation, any and all guarantors, sureties, and accommodation parties in connection with the Indebtedness.

Improvements. The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Trustee or Lender to enforce obligations of Grantor under this Deed of Trust or any of the Related Documents, together with interest on such amounts as provided in the Note. In addition, the word "Indebtedness" includes all additional sums due Lender under the terms of the Note, including but not limited to, a profit participation amount of up to an additional sum of Two Million and 00/100 Dollars (\$2,000,000.00).

Lender. The word "Lender" means Old Standard Life Insurance Company, an Idaho corporation, its successors and assigns.

Note. The word "Note" means the Note dated October 25th, 2001, in the principal amount of Three Million Nine Hundred Five Thousand and 00/100 Dollars (\$3,905,000.00) from Borrower to Lender, together with all renewals, extensions, modifications, refinancings, and substitutions for the Note. The maturity date of this Note, if not sooner paid, is November 1, 2002.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" section.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, and other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits and other benefits derived from the Property.

Trustee. The word "Trustee" means Bachman Stewart Title Services and any substitute or successor trustees.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THAT CERTAIN BUSINESS LOAN AGREEMENT BETWEEN GRANTOR AND LENDER OF EVEN DATE HERewith. ANY EVENT OF DEFAULT UNDER THE BUSINESS LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THE NOTE AND THIS DEED OF TRUST ARE GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

GRANTOR'S REPRESENTATION AND WARRANTY. Grantor warrants that Grantor has the full power and right to enter into this Deed of Trust and to hypothecate the Property.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Grantor shall strictly perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. This instrument is a Trust Deed executed in conformity with the Utah Trust Deed Act, UCA 57-1-19, et seq.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Hazardous Substances. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. Except as disclosed to and acknowledged by Lender in writing, Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on

Grantor's due diligence in investigating the Property for hazardous waste. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Specifically without limitation, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

ADA/FHAA Compliance. So long as this Deed of Trust remains outstanding, Grantor will, at its own cost and expense, in respect of the Property and in respect of Grantor's business activities at or within the Property: (a) comply with all requirements of the federal Americans with Disabilities Act (the "ADA") and the federal Fair Housing Amendments Act of 1988 (the "FHAA") and the rules and regulations promulgated thereunder (the "Rules"), to the extent applicable to Grantor's ownership, management, operation, leasing, use, construction, reconstruction, repair, remodeling, rehabilitation, or alteration of the Property or any part thereof; (b) immediately provide to Lender written notice (and copies of) any and all notices of actual, potential, or alleged violations of the ADA, the FHAA, or the Rules and any and all governmental investigations or regulatory actions instituted or threatened against Grantor or the Property or Grantor's business activities at or within the Property regarding the ADA, the FHAA, or the Rules; and (c) furnish to Lender, from time to time whenever reasonably requested by Lender, a Compliance Assessment, in form and substance reasonably satisfactory to Lender, prepared by an architect or engineer with skill, experience, and reputation acceptable to Lender, in the field of compliance with the ADA or the FHAA, as applicable.

Reappraisals. Lender shall have the right to obtain at Grantor's cost and expense reappraisals of the Property from any licensed or certified appraiser designated by Lender, from time to time (a) whenever such reappraisal may be required by any law, rule, or regulation applicable to the conduct of Lender's business, or may be requested or directed by any governmental authority charged with the administration of such law, rule, or regulation or Lender's compliance therewith, whether or not such request or direction has the force of law, or (b) whenever Lender has reasonable cause to believe that the then-current loan-to-value ratio applicable to the loan or loans secured by the Property exceed the original loan-to-value ratio approved by Lender with respect to such loan or loans, or (c) whenever reasonably deemed appropriate by Lender following the occurrence or

during the continuation of an Event of Default. Lender may use the results of such reappraisal to evaluate and restructure such loan or loans if necessary in Lender's reasonable discretion.

DUE ON SALE - CONSENT BY LENDER. Lender may, at its option, (a) declare immediately due and payable all sums secured by this Deed of Trust or (b) increase the interest rate provided in the Note or other document evidencing the indebtedness and impose such other conditions as Lender deems appropriate, upon the sale or transfer, without the Lender's prior written consent which consent shall not be unreasonably withheld, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation or partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock or partnership interests or membership interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are a part of this Deed of Trust.

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, and except as otherwise provided in this Deed of Trust.

Right To Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$5,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, liability, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days'

prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance to the extent such insurance is required and is or becomes available, for the term of the loan and for the full unpaid principal balance of the loan, or the maximum limit of coverage that is available, whichever is less.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$5,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Lender may, at its election, receive and retain the proceeds and apply the same to the reduction of the Indebtedness and/or the payment of any lien affecting the Property, or may apply the proceeds to the repair, restoration and replacement of the Property. In the event Lender elects to apply the insurance proceeds to the repair, restoration and replacement of the Property, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

WARNING

Unless Grantor provides Lender with evidence of the insurance coverage as required herein, Lender may purchase insurance at Grantor's expense to protect Lender's interest. This insurance may, but need not, also protect Grantor's interest. If the Property becomes damaged, the coverage Lender purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

Grantor is responsible for the cost of any insurance purchased by Lender. The cost of this insurance may be added to the Note balance. If the cost is added to the Note balance, the interest rate on the Note will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

The coverage Lender purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

TAX AND INSURANCE RESERVES. Subject to any limitations set by applicable law and if Grantor fails to pay any taxes, assessments or insurance when due, Lender may require Grantor to maintain with Lender reserves for payment of annual taxes, assessments, and insurance premiums, which reserves shall be created by advance payment or monthly payments of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before due, amounts at least equal to the taxes, assessments, and insurance premiums to be paid. If fifteen (15) days before payment is due the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit from Grantor, which Lender may satisfy by payment of

the taxes, assessments, and insurance premiums required to be paid by Grantor as they become due. Lender shall have the right to draw upon the reserve funds to pay such items, and Lender shall not be required to determine the validity or accuracy of any item before paying it. Nothing in the Deed of Trust shall be construed as requiring Lender to advance other monies for such purposes, and Lender shall not incur any liability for anything it may do or omit to do with respect to the reserve account. Subject to any limitations set by applicable law, if the reserve funds disclose a shortage or deficiency, Grantor shall pay such shortage or deficiency as required by Lender. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Lender is hereby authorized to withdraw and apply such amounts on the Indebtedness upon the occurrence of an Event of Default. Lender shall not be required to pay any interest or earnings on the reserve funds unless required by law or agreed to by Lender in writing. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Property also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust.

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. However, Borrower shall be entitled to use the proceeds of any condemnation award to repair or restore the Property in a manner satisfactory to Lender if (a) Borrower is not otherwise in default under this Deed of Trust and (b) upon completion of such repair or restoration, the value of the Property (as determined by Lender in its reasonable discretion) is no less than the value of the Property on the date of this Deed of Trust. If the proceeds are applied to repair or restoration, Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. The net proceeds of the award shall mean the award after payment of all

reasonable costs, expenses, and attorneys' fees, of both the Trustee and Lender in connection with the condemnation.

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (c) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust.

Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Grantor authorizes Lender to file any number of financing statements and take whatever other action is required by Lender to perfect and continue Lender's security interest in the fixtures, Rents, and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust.

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to

effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor and Borrower under the Note, this Deed of Trust, and the Related Documents, and (b) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

PARCEL RELEASE PROVISIONS. Grantor anticipates that it may attempt to sell some of the lots and/or parcels (the "Parcels") comprising the Property to various purchasers. Provided that no Event of Default exists, Grantor shall be entitled to the release of the lien of this Deed of Trust and of any other instrument securing the Note from any such Parcel upon satisfaction of all of the following conditions precedent:

(a) All state, county, municipal or other requirements regarding the sale of the Parcels shall have been satisfied and evidence thereof provided to Lender and a final Property plat has been recorded containing a minimum of 712 legal lots (in the event Grantor requests a partial release of the Property prior to recording of this final plat, the Release Price and release terms shall be determined by Lender in its sole discretion and without reference to paragraph (c) below);

(b) The release shall be in connection with the sale of a Parcel to a bona fide purchaser for value;

(c) The purchaser of a Parcel to be sold shall have paid the full purchase price of that Parcel in cash and Lender shall have been paid the full Release Price equal to the greater of: (1) ninety percent (90%) of the net sales proceeds of the Parcel; (2) seventy-five percent (75%) of the market value of the Parcel as determined by Lender in its reasonable discretion; or (3) such greater percentage as is required to maintain a minimum fifty-five percent (55%) loan to value ratio as determined by Lender in its reasonable discretion. Borrower shall provide to Lender, at Borrower's expense, updated Property appraisals as the Lender may reasonably require at the time of any release request. The Release Price shall be applied as follows: (1) to pay in full the profit participation amount due as set forth in the Note at a rate of \$3,750.00 per Parcel as approved by Lender; (2) to Note principal; and (3) to accruing interest and other charges due. As used herein, "net sales proceeds" shall mean the full purchase price for said Parcel less all customary closing costs not to exceed fifteen percent (15%) of the gross sales price. In the event there are insufficient sales proceeds to pay the Release Price and the profit participation amount required above, Borrower shall pay the shortfall to Lender as an additional condition to said Parcel release.

(d) Lender shall have received such endorsements to its policy of title insurance insuring the lien of this Deed of Trust as Lender may require in its sole discretion;

(e) Lender shall have received a written request for the partial release together with such documents and information as Lender may reasonably request to verify that the conditions for such release have been satisfied, including but not limited to, a copy of the purchase contract and escrow closing statement. After receipt of such notice and the satisfaction of all conditions precedent for the partial release, including, but not limited to, the delivery of the full Release Price, Lender shall deliver to Trustee a standard form "Request for Partial Release," for the Parcel to be released, executed by Lender;

(f) All costs and expenses of Lender relating to all partial releases shall be paid by Grantor, including but not limited to reconveyance fees, title fees, recording fees and legal expenses;

(g) No partial release shall impair or adversely affect Lender's security in the Property remaining subject to this Deed of Trust or any term or provision of this Deed of Trust as it pertains to the Property remaining subject to this Deed of Trust; and

(h) The release of the subject Parcels shall not affect access to the remaining Parcels subject to this Deed of Trust. Without limiting the foregoing, a release of any Parcels surrounding any Parcel lacking access would require as a condition precedent the granting of a non-exclusive easement for access purposes to any Parcel lacking access in form reasonably required by Lender.

FULL PERFORMANCE. If Borrower pays all the Indebtedness when due and terminates the loan, and Grantor otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor shall pay Lender a reasonable reconveyance fee for said reconveyance. The grantee in any such reconveyance may be described as the "person or persons legally entitled thereto."

DEFAULT. Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Deed of Trust:

Default on Indebtedness. Failure of Borrower to make any payment when due on the Indebtedness.

Compliance Default. Failure of Grantor or Borrower to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents or the failure of Borrower or Grantor to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor. If such a non-payment default is curable and if Borrower or Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within thirty (30) days; or (b) if the cure requires more than thirty (30) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance within ninety (90) days after notice is sent.

Breaches. Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor or Borrower under this Deed of Trust, the Note or the Related Documents is, or at the time made or furnished was, false in any material respect.

Insolvency. The insolvency of Borrower or Grantor; appointment of a receiver for any part of Borrower's or Grantor's property; any assignment for the benefit of creditors; the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor; provided, however, that Borrower or Grantor shall have thirty (30) days in which to obtain a dismissal of any such proceedings; or the dissolution or termination of Borrower's or Grantor's existence as a going business (if Borrower or Grantor is a business). Except to the extent prohibited by federal law or state law, the death of Borrower or Grantor (or a member or partner of Borrower or Grantor) also shall constitute an Event of Default under this Deed of Trust; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the deceased's estate to assume unconditionally the obligations arising hereunder in a manner reasonably acceptable to Lender and, in so doing, cure the Event of Default.

Foreclosure, etc. Commencement of foreclosure, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including the failure of this Deed of Trust or any Related Document to create a valid and perfected security interest or lien) at any time and for any reason.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any Guarantor seeks, claims, or otherwise attempts to limit, modify, or revoke such Guarantor's guaranty with Lender or any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or such Guarantor dies or becomes incompetent; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith deems itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. If this Deed of Trust is foreclosed by judicial foreclosure, Lender will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (a) pay a reasonable rental for the use of the Property, or (b) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Deed of Trust, the Note, in any Related Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Lender's right to declare a default and to exercise any of its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender which in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust.

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of the county in which the Real Property is situated. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page or the Auditor's file number where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES TO GRANTOR AND OTHER PARTIES. Any notice under this Deed of Trust shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class, registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. For notice purposes, Grantor agrees to keep Lender and Trustee informed at all times of Grantor's current address.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Accounts and Records. Grantor will maintain a standard modern system of accounting administered in accordance with generally accepted accounting principles. Lender shall have the right to examine the books of account of Grantor to the extent that they pertain to this Deed of Trust and the Property, and to discuss the affairs, finances, and accounts of Grantor to such extent, all at such reasonable times and intervals as Lender may desire. Grantor will furnish to Lender, (i) within sixty (60) days after and as of the close of each fiscal year, the year-end financial statements of Grantor, including a balance sheet and a statement of earnings (income and loss) from Grantor's business and from the Property, as requested by Lender, in detail satisfactory to Lender; (ii) from time to time and within twenty (20) days following Lender's request therefor, all such financial information as may be necessary or appropriate for Lender's determination of Grantor's net operating income and debt service with all such financial information being prepared and certified as accurate by Grantor; and (iii) from time to time, upon Lender's request, tenant rent rolls, leasing summary reports and cash flow projections (or updates thereof), setting forth the status of all existing and anticipated leases or subleases affecting the Property and Grantor's best estimate of the revenues to be obtained and the expenses to be incurred in connection with the operation of the Property for the following one-year period. In addition to the above, Grantor shall furnish Lender with, as soon as available, but in no event later than ninety (90) days after the end of each fiscal year, copies of Grantor's tax returns.

Applicable Law. This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Washington, except and only to the extent of procedural matters related to the perfection and enforcement by Lender of its rights and remedies against the Property, which matters shall be governed by the laws of the State of Utah. However, in the event that the enforceability or validity of any provision of this Deed of Trust is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Deed of Trust (which secures the Note) has been applied for, considered, approved, and made in the State of Washington. **IF THERE IS A LAWSUIT, GRANTOR AND BORROWER, AT LENDER'S OPTION, AGREE TO SUBMIT TO THE JURISDICTION OF SPOKANE COUNTY, WASHINGTON. LENDER, BORROWER, AND GRANTOR HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER OR GRANTOR OR BORROWER AGAINST THE OTHER.**

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Lender's Right to Sell Participations in the Loan. Lender may at any time sell, assign, transfer, negotiate, grant participations in, or otherwise dispose of, to any one or more other lenders (hereinafter called "Participants") all or any part of the indebtedness of Grantor at any time outstanding under the Note, this Deed of Trust, or any of the Related Documents (collectively, the "Loan Documents"). Grantor acknowledges and agrees that any such disposition will give rise to an obligation of Grantor to each Participant and that, in such event, each Participant shall, for all purposes hereof, be entitled to the benefits of the Loan Documents and all other documents, instruments, and agreements therein described, as its interest may appear. Grantor shall, from time to time at the request of Lender, execute and deliver, or cause to be executed and delivered, to Lender or to such party or parties (including any Participant) as Lender may designate, any and all such further instruments as may in the opinion of Lender be necessary or desirable to give full force and effect to such disposition; including, but not limited to, a new note or new notes to be issued in exchange for the Note and such estoppel certificates or other instruments as may be requested from Grantor to evidence the continuing validity of the Loan Documents and the absence of any default by Lender thereunder. Notwithstanding the foregoing, Grantor acknowledges that no Participant shall be deemed a direct lender or co-lender with Lender.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Multiple Parties. If Grantor or Borrower consist of more than one person or entity, all obligations of Grantor and Borrower under this Deed of Trust shall be joint and several, and all references to Borrower shall mean each and every Borrower, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Deed of Trust. Where any one or more of the parties are corporations or partnerships or limited liability companies, it is not necessary for Lender to inquire into the powers of any of the parties or of the officers, directors, partners, agents, managers or members acting or purporting to act on their behalf.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

Successors and Assigns. Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time Is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waivers and Consents. Lender shall not be deemed to have waived any rights under this Deed of Trust (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor or Borrower, shall constitute a waiver of any of Lender's rights or any of Grantor or Borrower's obligations as to any future transactions. Whenever consent by Lender is required in this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all Indebtedness secured hereby.

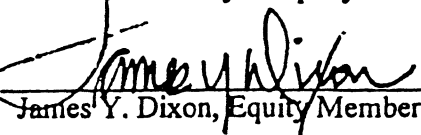
WAIVER OF RIGHT OF REDEMPTION. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS DEED OF TRUST, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBJECT TO THE DATE OF THIS DEED OF TRUST.

COMMERCIAL DEED OF TRUST. Grantor agrees with Lender that this Deed of Trust is a commercial deed of trust and that Grantor will not change the use of the Property without Lender's prior written consent.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

3D Construction and Development, L.L.C.,
a Utah limited liability company

By: 
James Y. Dixon, Equity Member

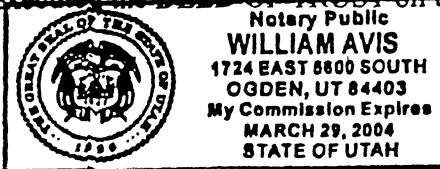
By: Ronald Kelly Dixon
Ronald Kelly Dixon, Equity Member

158728 Bk 0778 Pg 0627

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
County of Davis) ss.

On this 25th day of October, 2001, before me, the undersigned Notary Public, personally appeared James Y. Dixon, Equity Member of 3D Construction and Development, L.L.C., a Utah limited liability company (the "Limited Liability Company"), personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the Limited Liability Company and that he executed the DEED OF TRUST and acknowledged the DEED OF TRUST to be the free and voluntary act and deed of the Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this DEED OF TRUST and in fact executed the DEED OF TRUST on behalf of the Limited Liability Company.

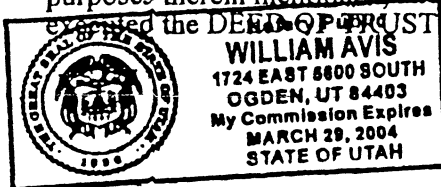


[Signature]
Notary Public for the State of Utah
My commission expires: 3-29-04

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
County of Davis) ss.

On this 25th day of October, 2001, before me, the undersigned Notary Public, personally appeared Ronald Kelly Dixon, Equity Member of 3D Construction and Development, L.L.C., a Utah limited liability company (the "Limited Liability Company"), personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the Limited Liability Company and that he executed the DEED OF TRUST and acknowledged the DEED OF TRUST to be the free and voluntary act and deed of the Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this DEED OF TRUST and in fact executed the DEED OF TRUST on behalf of the Limited Liability Company.



[Signature]
Notary Public for the State of Utah
My commission expires: 3-29-04

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. You are hereby requested, upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you under the Deed of Trust.

Date: _____

Beneficiary: _____

By: _____

Its: _____

Order Number: 20029276 SEVENTH AMEND

LEGAL DESCRIPTION

PARCEL 1

BEGINNING AT A POINT LOCATED 1600.5 FEET SOUTH AND 323.4 FEET WEST OF THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE WEST 3756.6 FEET MORE OR LESS TO A POINT 1200 FEET EAST OF W/L OF SAID SECTION, THENCE SOUTH 2000 FEET PARALLEL TO SAID W/L TO GRANTORS S/L, THENCE EAST 4047 FEET ALONG SAID S/L TO W/L OF 11600 WEST STREET, THENCE NORTH 413.25 FEET ALONG SAID LINE THENCE WEST 290.4 FEET THENCE NORTH 300 FEET, THENCE EAST 290.4 FEET TO W/L OF 11600 WEST STREET, THENCE NORTH 75 FEET ALONG SAID W/L, THENCE WEST 290.4 FEET, THENCE NORTH 1200 FEET TO POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND R/WS. LESS: PARCELS 05-100-0031, 05-100-0032 AND 05-100-0038. LESS: BEGINNING 2800.5 FEET SOUTH AND 323.4 FEET WEST FROM THE NORTHEAST CORNER OF SECTION 9, WEST 210 FEET, NORTH 150 FEET, WEST 150 FEET, NORTH 450 FEET, EAST 360 FEET, SOUTH 600 FEET TO THE POINT OF BEGINNING, WITH R/W.

PARCEL NO. 05-100-0003

PARCEL 2

BEGINNING AT A POINT 2 RODS WEST OF THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, RUNNING NORTH 2 RODS, WEST 128 1/2 RODS, NORTH 3 RODS, WEST TO SECTION LINE, SOUTH 5 RODS TO THE SOUTHWEST CORNER OF SAID SECTION, EAST TO THE POINT OF BEGINNING. LESS THAT TRACT DEEDED TO PORTER CHRISTENSEN.

PARCEL NO. 05-100-0012

PARCEL 3

LOT 7 AND THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, ALSO LOT 6 AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, ALSO BEGINNING AT A POINT 1893 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION RUNNING SOUTH 757 FEET, EAST 2640 FEET, NORTH 1625.3 FEET, SOUTH 69° 40' EAST 2814.3 FEET TO BEGINNING. ALSO SOUTHEAST QUARTER OF SAID SECTION, LESS THAT CONVEYED TO BOTHWELL ASSOCIATION, LESS: CONVEYED TO PARSON READY MIX COMPANY, EDWIN M. HIGLEY, H. PORTER CHRISTENSEN, LESS: TRACTS CONVEYED, LESS: TRACT DEEDED TO PARSON READY MIX COMPANY LESS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, WEST ALONG THE SECTION LINE 750 FEET, (EAST) 1647.89 FEET, EAST 750 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING. LESS: BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET, WEST 1320 FEET, NORTH 485.94 FEET, EAST 1320 FEET TO THE POINT OF BEGINNING. LESS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 58, BLOCK 2, MARBLE HILL ESTATES AND RUNNING WEST 1880 FEET MORE OR LESS TO THE SOUTH LINE OF WALLACE CHRISTENSEN: THENCE NORTH 69° 40' EAST ALONG SAID LINE OF CHRISTENSEN AND BOYD SOUTH MARBLE TRACTS 2000 FEET MORE OR LESS TO THE EAST LINE OF THE

Continued on next page

Continuation of Schedule A - Legal Description
 Order Number: 20029276 SEVENTH AMEND

NORTHWEST QUARTER; THENCE SOUTH ALONG THE EAST LINE OF SAID NORTHWEST QUARTER SOUTH 0° 16' 52" WEST 700 FEET MORE OR LESS TO THE POINT OF BEGINNING. LESS: TRACT DEEDED TO AMCOR INC., LESS: BEGINNING AT A POINT 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET FROM 88° 00' 09" WEST 244.53 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 8, AND RUNNING THENCE NORTH 88° 00' 09" WEST 1483.62 FEET; THENCE NORTH 0° 23' 40" WEST 1263 FEET; THENCE SOUTH 88° 00' 09" EAST 1492.069 FEET MORE OR LESS TO THE WEST LINE OF PARSONS READY MIX COMPANY PROPERTY, THENCE SOUTH 1263 FEET MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE NORTHERLY 215 FEET OF THE EASTERLY 1640.00 FEET.

PARCEL NO. 05-125-0004

PARCEL 4

BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET THENCE WEST 1320 FEET THENCE NORTH 485.94 FEET, THENCE EAST 1320 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS.

PARCEL NO. 05-125-0016

PARCEL 5

X BEGINNING AT A POINT 97 RODS SOUTH OF THE NORTHWEST CORNER OF SECTION 9 TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH ALONG THE SECTION LINE 2000 FEET, EAST 1200 FEET, NORTH PARALLEL TO SECTION LINE 2000 FEET, WEST 1200 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND RIGHT OF WAYS.

LESS AND EXCEPTING THE WESTERLY 315 FEET.

PARCEL NO. 05-100-0037

PARCEL 6

BEGINNING AT A POINT WHICH IS 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET AND NORTH 1263 FEET MORE OR LESS TO THE NORTHEAST CORNER OF PROPERTY COVERED IN TRUST DEED IN FAVOR OF FIRST SECURITY BANK OF UTAH IN BOOK 347, PAGE 683, BOX ELDER COUNTY RECORDS AND RUNNING NORTHERLY 1165.4 FEET MORE OR LESS TO THE SOUTHERLY CORNER OF LOT 51, MARBLE HILL ESTATES; THENCE WESTERLY ALONG SOUTHERLY LINE OF LOTS 51, 52, AND 53 TO THE SOUTHWEST CORNER OF LOT 53, MARBLE HILL ESTATES, NORTH 59° 13' 41" WEST 87.11 FEET, NORTH 0° 16' 51" EAST 189.24 FEET TO THE NORTHWEST CORNER OF LOT 55; THENCE WEST 950 FEET MORE OR LESS THENCE SOUTH 0° 23' 40" EAST 1620 FEET TO THE NORTHWEST CORNER OF PROPERTY

Continued on next page

Continuation of Schedule A - Legal Description
Order Number: 20029276 SEVENTH AMEND

X COVERED IN TRUST DEEDED RECORDED IN BOOK 347 PAGE 683; THENCE SOUTH 88° 00' 09" EAST 1492.069 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0011

PARCEL 7

X PART OF THE WEST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS NORTH 1465.77 FEET FROM THE SOUTHWEST CORNER OF SECTION 8, AND RUNNING SOUTH 83° 46' 15" EAST 1755.5 FEET TO THE WEST LINE OF PROPERTY COVERED IN TRUST DEED RECORDED IN BOOK 347, PAGE 683; THENCE NORTH 0° 23' 40" WEST 1250 FEET, NORTH 83° 46' 15" WEST 1755.5 FEET MORE OR LESS TO SECTION LINE; SOUTH 1250 FEET MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0012

PARCEL 8

X BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, NORTH 290 FEET, WEST 750 FEET, SOUTH 290 FEET, EAST 750 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0022

PARCEL 9

X PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN. BEGINNING AT A POINT 750 FEET WEST OF THE SOUTHEAST CORNER OF SAID SECTION 8, WEST 1230.98 FEET, NORTH 22° 46' WEST 244.53 FEET, NORTH 1428.4 FEET, EAST 1325.59 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING.

67 TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 07" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT

Continued on next page

1 of Schedule A - Legal Description
 2: 20029276 SEVENTH AMEND

A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98
 THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET;
 SOUTH 45° WEST 70 FEET, MORE OR LESS, TO THE NORTH LINE OF THE PARSON
 DEEDED IN BOOK 343, PAGE 606, OF OFFICIAL RECORDS.

10. 05-125-0008

10

THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST,
 SALT LAKE BASE AND MERIDIAN, US SURVEY: BEGINNING AT A POINT 290 FEET NORTH
 OF THE SOUTHEAST CORNER OF SECTION 8; RUNNING THENCE NORTH 1357.89 FEET;
 WEST 750 FEET; THENCE SOUTH 1357.89 FEET; THENCE EAST 750 FEET, MORE OR
 LESS TO PLACE OF BEGINNING.

10. 05-125-0013

11

BEGINNING AT A POINT 64.5 RODS (1064.25 FEET) SOUTH OF THE NORTHEAST CORNER OF
 SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH
 536.25 FEET; THENCE WEST 22 RODS (363 FEET) TO THE TRUE POINT OF
 BEGINNING; AND RUNNING THENCE WEST 298 RODS (4917 FEET); THENCE NORTH 32.5
 RODS (536.25 FEET); THENCE EAST 298 RODS (4917 FEET), TO A POINT 32.5 RODS
 (536.25 FEET) FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 32.5 RODS (536.25
 FEET) TO THE TRUE POINT OF BEGINNING.

10. 05-100-0041

12

FROM THE WEST HALF OF THE WEST HALF OF SECTION 10, TOWNSHIP 11 NORTH,
 SALT LAKE BASE AND MERIDIAN. BEGINNING AT THE INTERSECTION
 OF THE NORTH RIGHT-OF-WAY LINE OF 10400 NORTH AND THE EAST RIGHT-OF-WAY LINE OF
 10400 EAST LOCATED NORTH 00° 00' 00" EAST 33.00 FEET AND NORTH 89° 25' 21" EAST
 5318.24 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 10; RUNNING THENCE NORTH
 00° 00' 00" EAST 5318.24 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE SOUTH
 RIGHT-OF-WAY LINE OF 11200 NORTH; THENCE NORTH 89° 48' 53" EAST 1295.98 FEET
 TO THE SOUTH RIGHT-OF-WAY LINE TO THE EAST LINE OF THE WEST HALF OF SAID
 SECTION 10; THENCE SOUTH 00° 05' 49" WEST 3936.47 FEET ALONG SAID EAST LINE TO A
 POINT 10.0 FEET WEST OF THE WEST BANK OF THE BEAR RIVER CANAL; THENCE PARALLEL
 TO THE WEST BANK THE FOLLOWING SEVEN COURSES; (1) SOUTH 10° 26' 17" WEST
 193.36 FEET; (2) SOUTH 32° 30' 43" WEST 193.36 FEET; (3) SOUTH 39° 09' 43" WEST
 198.99 FEET; (4) SOUTH 35° 36' 37" WEST 198.99 FEET; (5) SOUTH 23° 45' 04" WEST
 181.10 FEET; (6) SOUTH 13° 37' 20" WEST 181.10 FEET; (7) SOUTH 15° 31' 04" WEST
 193.36 FEET TO SAID NORTH RIGHT-OF-WAY LINE; THENCE SOUTH 89° 25' 21" WEST

Continued on next page

Continuation of Schedule A - Legal Description
Order Number: 20029276 SEVENTH AMEND

708.81 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. LESS THAT ACREAGE LYING WITHIN THE BEAR RIVER CANAL RIGHT-OF-WAY.

TOGETHER WITH A WATER RIGHT IN THE UTAH-IDAHO SUGAR COMPANY CANAL SYSTEM FOR 6 ACRES.

PARCEL NO. 05-101-0001

PARCEL NO. 13

X PART OF E/2 OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS WEST 1980.89 FEET AND NORTH 22°46' WEST 245.53 FEET AND NORTH 1428.4 FEET OF THE SOUTHEAST CORNER OF SECTION 8, NORTHERLY 1000 FEET MORE OR LESS TO THE MOST SOUTHERLY CORNER OF LOT 51, MARBLE HILLS ESTATES AND EASTERLY ALONG SOUTHERLY LINE OF MARBLE HILL ESTATES TO THE MOST SOUTHERLY CORNER OF LOT 47, SOUTH 0°16'51" WEST 108 FEET MORE OR LESS TO A FENCE, NORTH 89°01'40" EAST 1640.00 FEET TO SECTION LINE, SOUTH 900 FEET MORE OR LESS TO A POINT WHICH IS EAST OF THE POINT OF BEGINNING. WEST 2075.59 FEET MORE OR LESS TO THE POINT OF BEGINNING, LESS: BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 51, BLOCK 2 MARBLE HILLS ESTATES, NORTH 40°14'11" EAST ALONG SOUTHEASTER LINE OF SAID LOT 51 A DISTANCE OF 85.15 FEET TO THE SOUTHWEST CORNER OF LOT 50 OF SAID BLOCK 2 MARBLE HILL ESTATES, NORTH 82°05'57" EAST ALONG SOUTHERLY LINE OF SAID LOT 50 A DISTANCE OF 65.66 FEET TO THE SOUTHEAST CORNER OF SAID LOT 50, SOUTH 269.69 FEET TO NORTHERLY EDGE OF A 30 FOOT WIDE DIRT FIRE ROAD, ALONG THE NORTH EDGE OF SAID FIRE ROAD FOLLOWING COURSES: 87°47'48" WEST 76.52 FEET, SOUTH 79°46'59" WEST 44.28 FEET TO A POINT SOUTH OF POINT OF BEGINNING A DISTANCE OF 206.46 FEET, NORTH 206.46 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH 30 WATER HOOKUPS TOGETHER WITH ANY AND ALL WATER RIGHTS APPURTENANT TO PROPERTY.

TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 07" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98 FEET; THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET;

Continued on next page

Exhibit

“C”

In re 3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02

Case No. _____

Debtor

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
Approximately 640 acres 11450 West 10400 North Thatcher, UT 84337	Fee Simple		7,000,000.00	6,500,000.00

Sub-Total >	7,000,000.00	(Total of this page)
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Total >	7,000,000.00
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(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

**United States Bankruptcy Court
DISTRICT OF UTAH**

In re 3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02
Debtor

Case No. _____

Chapter 7

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

AMOUNTS SCHEDULED

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	7,000,000.00		
B - Personal Property	Yes	3	50.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	1		6,500,000.00	
E - Creditors Holding Unsecured Priority Claims	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	1		0.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total number of Sheets of ALL Schedules		9			
Total Assets			7,000,050.00		
			Total Liabilities	6,500,000.00	

United States Bankruptcy Court
DISTRICT OF UTAH

In re 3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02

Debtor

Case No. 02 36108 JAB

Chapter 7

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 15 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 16 - 21. If the answer to any question is "None," or the question is not applicable, mark the box labeled "None". If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the two years immediately preceding the filing of the this bankruptcy case, any of the following: an officer, director, managing executive, or person in control of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any person in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
\$0.00	2002
\$0.00	2001
\$0.00	2000

2. Income other than from employment or operation of business

None ☒ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
--------	---------------------------

3. Payments to creditors

None ☒ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within 90 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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0236108D2

None ☐ b. List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
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None ☐ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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5. Repossessions, foreclosures and returns

None ☐ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and receiverships

None ☐ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None ☐ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT, CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. Gifts

None ☐ List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None ☐ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT. NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Richard R. Medsker 205 26th Street, Suite 34 Ogden, UT 84401	September 24, 2002	\$800.00

10. Other transfers

None ☒ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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11. Closed financial accounts

None ☒ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None ☒ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

None ☒ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None ☒ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None ☒ If the debtor has moved within the two years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the two years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

[An individual or joint debtor should complete this portion of the statement *only* if the debtor is or has been in business, as defined above, within the two years immediately preceding the commencement of this case.]

16. Nature, location and name of business

- None ☐ a. If the debtor is an individual, list the names and addresses of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the two years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the two years immediately preceding the commencement of this case.
- b. If the debtor is a partnership, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities, within the two years immediately preceding the commencement of this case.
- c. If the debtor is a corporation, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities within the two years immediately preceding the commencement of this case.

NAME AND ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES OF OPERATION
3D Construction & Development, LLC 116 West 4600 South Washington Terrace, UT 84405	Construction & development	1998 - present

17. Books, records and financial statements

- None ☒ a. List all bookkeepers and accountants who, within the six years immediately preceding the filing of this bankruptcy case, kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
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- None ☒ b. List all firms or individuals who, within the two years immediately preceding the filing of this bankruptcy case, have audited the books of account and records, or prepared a financial statement of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
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- None ☒ c. List all firms or individuals who, at the time of the commencement of this case, were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
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- None ☐ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the two years immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS	DATE ISSUED
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Old Standard Life Insurance Co. 11450 West 10400 North Riveter, UT 84307	June, 2001 601 1 st Ave Dept 171000 Spokane, Wa. 99201-5001
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18. Inventories

- None ☒ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
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- None ☒ b. List the name and address of the person having possession of the records of each of the two inventories reported in a. above

DATE OF INVENTORY	NAME AND ADDRESS OF CUSTODIAN OF INVENTORY RECORDS
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19. Current Partners, Officers, Directors and Shareholders

None



- a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE AND PERCENTAGE OF INTEREST

None



- b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE
OF STOCK OWNERSHIP

James Y Dixon

Managing member

50%

Ronald K. Dixon

Member

50%

20. Former partners, officers, directors and shareholders

None



- a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE OF WITHDRAWAL

None



- b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS

TITLE

DATE OF TERMINATION

21. Withdrawals from a partnership or distributions by a corporation

None



- If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS
OF RECIPIENT,
RELATIONSHIP TO DEBTOR

DATE AND PURPOSE
OF WITHDRAWAL

AMOUNT OF MONEY
OR DESCRIPTION
AND VALUE OF PROPERTY

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief

Date

9-24-02

Signature

James Y. Dixon
Managing Member

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C §§ 152 and 3571*

United States Bankruptcy Court
DISTRICT OF UTAH

In re 3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02
Debtor

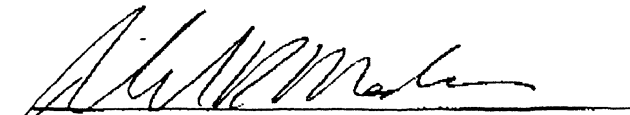
Case No. _____

Chapter 7

COMPENSATION STATEMENT OF ATTORNEY FOR THE DEBTOR(S)

1. The undersigned is the attorney for the debtor(s) in this case.
2. The total compensation promised the undersigned by the debtor(s) for the services rendered or to be rendered in connection with this case is \$ 800.00; the only compensation which has been received from the debtor(s) or any other person on said account is \$ 800.00; the balance due thereon is \$ 0.00; and the source of compensation paid or promised, if a source other than the debtor(s), is:
3. The undersigned further states that no understanding or agreement exists for a division of fees or compensation between the undersigned and any other person or entity, except any agreement he may have for the sharing of his compensation with a member or members or regular associate of his law firm and except:
4. \$ 200.00 of the filing fee has been paid.

SEPTEMBER 24, 2007
Date


Attorney for Debtor(s):

FARR, KAUFMAN, SULLIVAN, GORMAN, JENSEN, MEDSKER, NICH
205 26th Street, Suite 34
Ogden, UT 84401

(801) 394-5526

*[Required by Rule 2016(h) to be filed and transmitted to the United States Trustee within 15 days after the order for relief.
(Not to be filed in lieu of an Application for Compensation which may be filed pursuant to Bankruptcy Rule 2016.)]*

COMPENSATION STATEMENT OF ATTORNEY FOR THE DEBTOR(S)

In re 3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02

Case No. _____

Debtor

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Bank of Utah, Layton, Utah - Checking		50.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			

Sub-Total > **50.00**
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
10. Annuities. Itemize and name each issuer.	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.	X			
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures. Itemize.	X			
14. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15. Accounts receivable.	X			
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			

Sub-Total > **0.00**
(Total of this page)

Sheet 1 of 2 continuation sheets attached
to the Schedule of Personal Property

In re **3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02**

Case No. _____

Debtor

SCHEDULE B PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.		Utah State Contractors License		0.00
23. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.	X			

Sub-Total >	0.00
(Total of this page)	
Total >	50.00

(Report also on Summary of Schedules)

Sheet **2** of **2** continuation sheets attached
to the Schedule of Personal Property

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor." Include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS, INCLUDING ZIP CODE	C O D E B T O R	H W J C	D A T E C L A I M W A S I N C U R R E D N A T U R E O F L I E N A N D D E S C R I P T I O N A N D M A R K E T V A L U E O F P R O P E R T Y S U B J E C T T O L I E N	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	A M O U N T O F C L A I M W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	U N S E C U R E D P O R T I O N I F A N Y
Account No.								
Old Standard Life Insurance Co. 11450 West 10400 North Thatcher, UT 84937 601 W. 1 st Ave Dept 171000 Spokane, WA 99201-5071			Mortgage Approximately 670 acres					
			Value \$ 7,000,000.00				6,500,000.00	0.00
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					

0 continuation sheets attached

Subtotal
(Total of this page) **6,500,000.00**

Total
(Report on Summary of Schedules) **6,500,000.00**

Debtor

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of this petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor." Include the entity on the appropriate schedule of creditors, and complete Schedule II - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,300* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$4,300* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to \$1,950* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support**

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 1998, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	C O D E B T O R	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M. I F C L A I M I S S U B J E C T T O S E T O F F S O S T A T E	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	A M O U N T O F C L A I M
Account No.							
Account No.							
Account No.							
Account No.							
Subtotal (Total of this page)							
Total (Report on Summary of Schedules)							0.00

0 continuation sheets attached

In re **3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02**

Case No. _____

Debtor

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.
State whether lease is for nonresidential real property.
State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re 3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02

Case No. _____

Debtor

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity other than a spouse in a joint case that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

☐ Check this box if debtor has no codebtors

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
James Y. Dixon	Old Standard Life Insurance Co 41450 West 10400 North Thatcher, UT 84337 601 W. 1 st Ave Dept 171000
Ronald K. Dixon	Old Standard Life Insurance Co. 11450 West 10400 North Thatcher, UT 84337 Spokane, WA 99201-5071

0 continuation sheets attached to Schedule of Codebtors

United States Bankruptcy Court
DISTRICT OF UTAH

In re 3D CONSTRUCTION & DEVELOPMENT LLC 9-24-02
Debtor

Case No. _____

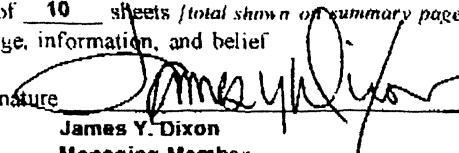
Chapter 7

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Managing Member of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 10 sheets (total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date 9-24-02

Signature 
James Y. Dixon
Managing Member

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.*

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF UTAH

Clerks Initials

MATRIX COVER SHEET

Debtor 3D Construction & Development LLC 02 36108 JAB
Case Number _____
Attorney For Debtor Richard R. Medsker
Date Petition Was Filed _____

SEP 25 10 23 AM '02
WILLIAM V. SMITH
CLERK OF COURT
BY DEPUTY CLERK

Exhibit

“D”

FILED IN THE
UNITED STATES
BANKRUPTCY COURT

2002 NOV -6 P 3:02

[Handwritten signature]
DISTRICT OF UTAH
CLERK

Blake D. Miller (#4090)
Craig H. Howe (#7552)
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
201 South Main Street, Suite 600
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001

Attorneys for Ocwen Federal Bank, as authorized
agent and servicer for Old Standard Life Insurance Company.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:)	
)	Bankruptcy Case No. 02-36108
3D CONSTRUCTION &)	
DEVELOPMENT, LLC,)	Chapter 7
)	Hon. Judith A. Boulden
Debtor.)	

MOTION FOR RELIEF FROM AUTOMATIC STAY

Ocwen Federal Bank, as authorized agent and servicer for Old Standard Life Insurance Company ("Old Standard"), by and through its counsel, hereby moves for relief from the automatic stay. For the reasons set forth below, Old Standard respectfully requests that the Court enter an order terminating the automatic stay to allow Old Standard to exercise its state law rights and remedies in and to certain real and personal property of the Debtor located in Box Elder County, Utah. In support of this Motion, Old Standard states as follows:



1. On or about October 25, 2001, the Debtor executed a Promissory Note in the original principal sum of \$3,905,000.00 in favor of Old Standard. A true and correct copy of the Promissory Note is attached hereto as Exhibit "A."

2. Payment of the Promissory Note was secured by a Deed of Trust and an Assignment of Rents, both dated October 25, 2001, encumbering certain real property of the Debtor located in Box Elder County, Utah (the "**Property**"). The Deed of Trust was recorded in the official records of Box Elder County, Utah, on October 25, 2001, as Entry No. 158728, in Book 778, at Page 613. The Assignment of Rents was recorded in the official records of Box Elder County, Utah, on October 25, 2001, as Entry No. 158729, in Book 778, at Page 634. True and correct copies of the Deed of Trust and the Assignment of Rents are attached as Exhibits "B" and "C," respectively.

3. Pursuant to a Commercial Security Agreement dated October 25, 2001, executed by the Debtor, Old Standard also holds a first position security interest in all of the personal property and fixtures related to the Property. This security interest was properly perfected by the filing of a UCC-1 Financing Statement on October 25, 2001, as File No. 172979200141, and recorded in the official records of Box Elder County, Utah, as Entry No. 158730, in Book 778, at Page 647. A true and correct copy of the Financing Statement is attached as Exhibit "D."

4. The Debtor's Chapter 7 petition was filed on September 25, 2002, just two (2) days before the Successor Trustee under the Deed of Trust was to conduct a foreclosure sale of the Property.

5. Pursuant to 11 U.S.C. § 362(d)(2)(A), relief from the automatic stay in a Chapter 7 case is appropriate if the Debtor has no equity in the property at issue. In determining the value of the property, the Court may properly accept the value listed in the Debtor's schedules. See *In re White*, 216 B.R. 232, 236 (Bankr. S. D. Ohio 1997) (accepting the valuation listed in debtor's schedules, the court determined that the debtor had no equity in the property); *In re Lee*, 182 B.R. 354, 360 (Bankr. S.D. Ga. 1995) (same).

6. In its schedules, the Debtor lists the value of the Property as \$7,000,000.00.

7. As of October 31, 2002, the amount due and owing to Old Standard under the Note and the Deed of Trust was \$6,790,507.48, a difference of approximately \$209,492.00 from the Debtor's listed property value. Interest on the obligations continues to accrue at the rate of \$2,526.39 per day.

8. With the addition of a typical realtor fee (\$420,000 at 6%), closing costs, appraisal fees, title insurance, and other expenses the Debtor or the Chapter 7 Trustee can reasonably expect to incur in selling the Property, the Debtor has no equity in the Property.

9. As additional grounds for relief from the stay, under 11 U.S.C. § 362(d)(1), where a debtor has one significant asset that has been pledged as collateral in favor of a single secured creditor, and the debtor has little or no unsecured debt, "cause" exists both for relief from the automatic stay and for dismissal of the entire case. *Carolin Corp. v. Miller*, 886 F.2d 693, 699 (4th Cir. 1989); *In re MacInnis*, 235 B.R. 255, 260 (Bankr. S.D.N.Y. 1998); see

also In re Shady Grove Tech Ctr. Assoc., L.P., 216 B.R. 386, 391 (Bankr. D. Md. 1998) (“Generally, bankruptcy is not favored as the means for resolving . . . a two-party dispute.”).

10. The Debtor’s schedules list the Property as the only asset of the estate, other than \$50.00 in a bank account.


11. The Debtor’s schedules list the obligations to Old Standard as the Debtor’s only debt. The schedules contain no unsecured claims. Accordingly, this bankruptcy case represents a two-party dispute between the Debtor and Old Standard involving Property in which the Debtor has no equity. Without other creditors and equity, this case has no purpose other than to delay the inevitable exercise of Old Standard’s interests in the Property.

12. In view of the Debtor’s Chapter 7 petition, it is clear that the Debtor does not intend to reorganize its business but only to liquidate its interest in the Property. The Debtor has admitted under oath, however, that it has no equity in the Property. Accordingly, the Property is of no benefit to the bankruptcy estate.

WHEREFORE, because the Debtor has no equity in the Property under 11 U.S.C. § 362(d)(2), and because “cause” exists for relief from the stay under section 11 U.S.C. § 362(d)(1), Old Standard respectfully requests that the Court enter an order terminating the automatic stay to allow Old Standard to exercise its state law rights and remedies in and to the Property. Old Standard further respectfully requests that the ten-day stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived and that the order be effective upon entry.

DATED this 6th day of November 2002.

BALLARD SPAHR ANDREWS & INGERSOLL, L.L.P



Blake D. Miller

Craig H. Howe

Attorneys for Ocwen Federal Bank, as authorized
agent and servicer for Old Standard Life Insurance
Company

CERTIFICATE OF SERVICE

I hereby certify that, on the 6th day of November 2002, I caused a true and correct copy of the foregoing **MOTION FOR RELIEF FROM AUTOMATIC STAY** to be served by first class mail, postage prepaid, on the following:

United States Trustee
#9 Exchange Place
Suite 100
Salt Lake City, Utah 84111-2147

David L. Miller
849 West Hill Field Road
Barnes Bank Building
Suite 202
Layton, Utah 84041

3D Construction & Development, LLC
116 West 4600 South
Washington Terrace, Utah 84405

Richard R. Medsker
Bamberger Square Building
205 26th Street
Suite 34
Ogden, Utah 84401



900401

PROMISSORY NOTE

Borrower: 3D Construction and Development, L.L.C., a Utah limited liability company
116 West 4600 South
Ogden, Utah 84405

Lender: Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

Principal Amount: \$3,905,000.00

Interest Rate: 13%

Date of Note: 10-25-01

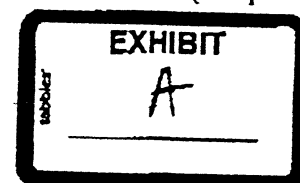
PROMISE TO PAY. 3D Construction and Development, L.L.C., a Utah limited liability company (referred to herein as "Borrower") promises to pay to Old Standard Life Insurance Company, an Idaho corporation ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Million Nine Hundred Five Thousand and 00/100 Dollars (\$3,905,000.00) together with interest on the unpaid principal balance from the date of disbursement until paid in full.

PAYMENT. Borrower will pay this loan in accordance with the following payment schedule:

Borrower will make eleven (11) monthly interest-only payments, commencing December 1, 2001, and on the first day for each succeeding month thereafter, with interest calculated on the unpaid principal balance at the fixed rate of thirteen percent (13%) per annum. The interest portion of any monthly installment payment shall be determined based upon a 360-day year and by computing thirty (30) days interest on the outstanding balance on the Note as of the scheduled monthly installment due date. Notwithstanding the foregoing, interest only for the partial calendar month following the date of funding shall be due and payable in advance on the date of Note funding. Such interest shall be deemed earned on said date, and shall not be deemed a payment on principal. Borrower's final payment due November 1, 2002 will be for all principal and all accrued interest not yet paid. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued interest, then to any unpaid collection costs and late charges, and any remaining amount to principal.

PROFIT PARTICIPATION AGREEMENT. As additional consideration for making this loan, in addition to the Note principal, interest, and origination fees, Borrower agrees to pay to Lender a profit participation amount in the event of full payoff of the principal amount of the Note as follows: (a) From the date of this Note through and including January 31, 2002, Borrower shall pay to Lender a profit participation amount equal to Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00); (b) From February 1, 2002, through and including April 30, 2002, Borrower shall pay to Lender a profit participation amount equal to One Million and 00/100 Dollars (\$1,000,000.00); and (c) From May 1, 2002, and thereafter, Borrower shall pay to Lender a profit participation amount equal to Two Million and 00/100 Dollars (\$2,000,000.00). Notwithstanding anything to the contrary herein, upon an event of default under this Note or under any other agreement executed in connection with this Note, Borrower shall immediately pay Lender a profit participation amount of Two Million and 00/100 Dollars (\$2,000,000.00). This profit participation agreement will survive Note maturity and full payment of the Note amount, and will continue to be secured by the Deed of Trust and Assignment of Rents executed in connection herewith until the profit participation amount is paid in full. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, they will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Old Standard Life Insurance Company, 601 W. 1st Ave., Dept. 171000, Spokane, Washington 99201.

MAXIMUM INTEREST RATE. Under no circumstances will the interest rate on this Note exceed (except for any higher default rate shown below) the maximum rate allowed by applicable law.



LATE CHARGE. If a payment is five (5) days or more late, Borrower will be charged a late fee of ten percent (10%) of the regularly scheduled payment.

DEFAULT. Borrower will be in default if any of the following happens: (a) Borrower fails to make any payment when due. (b) Borrower fails to comply with or perform when due any other term, obligation, covenant or condition contained in this Note or any agreement related to this Note, or in any other agreement or loan Borrower has with Lender. If this non-payment default is curable and if Borrower has not been given notice of a similar breach within the preceding twelve (12) months, it may be cured if Borrower, after Lender delivers notice demanding cure of the default to Borrower, cures the default within thirty (30) days, or if the default cannot reasonably be cured within such 30-day time period, Borrower begins such cure within this 30-day period and thereafter diligently pursues such cure to completion no more than 90 days after notice is sent. (c) Any representation or statement made or furnished to Lender by Borrower or on Borrower's behalf is false or misleading in any material respect. (d) Borrower dissolves, becomes insolvent, a receiver is appointed for any part of Borrower's property, Borrower makes an assignment for the benefit of creditors, or any proceeding is commenced either by Borrower or against Borrower under any bankruptcy or insolvency laws; provided, however, that Borrower shall have thirty (30) days in which to obtain a dismissal of any such proceedings. (e) Any creditor tries to take any of Borrower's property on or in which Lender has a lien or security interest. This includes a garnishment of any of Borrower's accounts with Lender. (f) Borrower (or any member or partner of Borrower) dies or becomes incompetent; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the deceased's estate to assume unconditionally the obligations arising under this Note in a manner reasonably satisfactory to Lender, and, in so doing, cure the event of default. (g) Any guarantor of the Note seeks, claims, or otherwise attempts to limit, modify, or revoke such guarantor's guaranty with Lender or any of these events of default occur with respect to any guarantor of this Note or any guarantor dies or becomes incompetent; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the deceased guarantor's estate to assume unconditionally the obligations arising under this Note in a manner satisfactory to Lender, and, in so doing, cure the event of default. (h) Lender in good faith deems itself insecure.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, without notice, and then Borrower will pay that amount, in addition to any prepayment premium as calculated above. Upon default, including failure to pay upon final maturity, Lender, at its option, may also, if permitted under applicable law, do one or both of the following: (a) increase the interest rate on this Note to ten percentage (10.00%) points over the interest rate in effect at the time of the default, and (b) add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the rate provided in this Note (including any increased rate). The interest rate will not exceed the maximum rate permitted by applicable law. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower also will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorney fees and legal expenses whether or not there is a lawsuit, including attorney fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. **LENDER AND BORROWER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER OR BORROWER AGAINST THE OTHER. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WASHINGTON. IF THERE IS A LAWSUIT, BORROWER AGREES TO SUBMIT TO THE JURISDICTION OF SPOKANE COUNTY, WASHINGTON.**

COLLATERAL. This Note is secured by, in addition to any other collateral, a Deed of Trust and an Assignment of Rents to a trustee in favor of Lender on real property located in Box Elder County, State of Utah, all the terms and conditions of which are hereby incorporated and made a part of this Note.

GENERAL PROVISIONS. Time is of the essence hereof. All sums paid or agreed to be paid to the Lender for the use, forbearance or detention of the Note indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note indebtedness until payment in full so that the rate or amount of interest does not exceed the maximum lawful rate in effect and applicable to the Note indebtedness for so long as the Note indebtedness is outstanding. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, protest and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew, or

extend (repeatedly and for any length of time) this loan, or release any party or guarantor or collateral; fail to realize upon or perfect Lender's security interest in the collateral; or take any other action deemed reasonably necessary by Lender without the consent of or notice to anyone. If Borrower consists of more than one person or entity, all obligations of Borrower herein shall be joint and several, and all references to Borrower shall mean each and every Borrower. This means that each Borrower signing below is responsible for all obligations in this Promissory Note. It is not necessary for Lender to inquire into the powers of any of the parties hereto or of the officers, directors, partners, managers, members or agents acting or purporting to act on their behalf.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$15.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

3D Construction and Development, L.L.C.,
a Utah limited liability company

By: James Y. Dixon
James Y. Dixon, Equity Member

By: Ronald Kelly Dixon
Ronald Kelly Dixon, Equity Member

RECORDATION REQUESTED BY:

Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

158728 Bk 0778 Pg 0613
LuAnn Adams, Box Elder County Recorder
10/25/2001 4:16pm FEE: 70.00 Dep't
Rec'd For: BACKMAN STEWART TITLE SER

WHEN RECORDED MAIL TO:

Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

SEND TAX NOTICES TO:

3D Construction and Development, L.L.C.,
a Utah limited liability company
116 West 4600 South
Ogden, Utah 84405

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

#20029276

DEED OF TRUST

THIS DEED OF TRUST IS DATED October 25th, 2001, among 3D Construction and Development, L.L.C., a Utah limited liability company, whose address is 116 West 4600 South, Ogden, Utah 84405 (referred to below as "Grantor"); Old Standard Life Insurance Company, an Idaho corporation, whose address is 601 W. 1st Ave., Dept. 171000, Spokane, Washington 99201 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Bachman Stewart Title Services, whose address is 1558 N. Woodland Park Drive, Suite 410, Layton, Utah 84041 (referred to below as "Trustee").

THIS DEED OF TRUST IS INTENDED ALSO AS A FIXTURE FILING AND IS TO BE INDEXED NOT ONLY AS A DEED OF TRUST BUT ALSO AS A FIXTURE FILING.

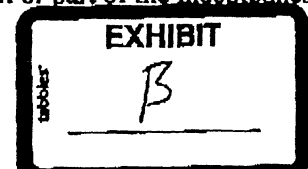
CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all appliances, furniture and furnishings affixed to the real property; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, and all requisite approvals, licenses, permits, variances, cooperative agreements, tax credits (if applicable), tax abatement benefits (if applicable), and land-use entitlements, located in Box Elder County, State of Utah (the "Real Property"):

See Exhibit "A" attached hereto and by this reference incorporated herein.

Tax Identification Nos. 05-100-0003; 05-100-0012; 05-125-0004, 05-125-0016; 05-100-0037; 05-125-0011; 05-125-0012; 05-125-0022; 05-125-0008; 05-125-0013; 05-100-0041; 05-101-0001, 05-125-000

Grantor further conveys to Trustee in trust for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest to any and all water rights affecting the Property, including but not limited to, that water right in the Utah-Idaho Sugar Company Canal System for six acres and those water certificate numbers: 29596 and A29-1596 and 39884, with any and all rights related thereto, including all pipelines, reservoirs, rights-of-way, structures, and improvements.

Grantor hereby assigns as security to Lender, all of Grantor's right, title, and interest in and to all leases, Rents, and profits of the Property. Lender grants to Grantor a license to collect the Rents and profits, which license may be revoked at Lender's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness. Grantor further grants to Lender a security interest in all Personal Property.



DEFINITIONS. The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Beneficiary. The word "Beneficiary" means Old Standard Life Insurance Company, an Idaho corporation, its successors and assigns. Old Standard Life Insurance Company, an Idaho corporation, also is referred to as "Lender" in this Deed of Trust.

Borrower. The word "Borrower" means 3D Construction and Development, L.L.C., a Utah limited liability company. 3D Construction and Development, L.L.C., a Utah limited liability company is also referred to as "Grantor" herein.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Grantor. The word "Grantor" means 3D Construction and Development, L.L.C., a Utah limited liability company

Guarantor. The word "Guarantor" means and includes without limitation, any and all guarantors, sureties, and accommodation parties in connection with the Indebtedness.

Improvements. The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Trustee or Lender to enforce obligations of Grantor under this Deed of Trust or any of the Related Documents, together with interest on such amounts as provided in the Note. In addition, the word "Indebtedness" includes all additional sums due Lender under the terms of the Note, including but not limited to, a profit participation amount of up to an additional sum of Two Million and 00/100 Dollars (\$2,000,000.00).

Lender. The word "Lender" means Old Standard Life Insurance Company, an Idaho corporation, its successors and assigns.

Note. The word "Note" means the Note dated October 25th, 2001, in the principal amount of Three Million Nine Hundred Five Thousand and 00/100 Dollars (\$3,905,000.00) from Borrower to Lender, together with all renewals, extensions, modifications, refinancings, and substitutions for the Note. The maturity date of this Note, if not sooner paid, is November 1, 2002.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" section.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Bachman Stewart Title Services and any substitute or successor trustees.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THAT CERTAIN BUSINESS LOAN AGREEMENT BETWEEN GRANTOR AND LENDER OF EVEN DATE HEREWITH. ANY EVENT OF DEFAULT UNDER THE BUSINESS LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THE NOTE AND THIS DEED OF TRUST ARE GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

GRANTOR'S REPRESENTATION AND WARRANTY. Grantor warrants that Grantor has the full power and right to enter into this Deed of Trust and to hypothecate the Property.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Grantor shall strictly perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. This instrument is a Trust Deed executed in conformity with the Utah Trust Deed Act, UCA 57-1-19, et seq.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Hazardous Substances. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. Except as disclosed to and acknowledged by Lender in writing, Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on

Grantor's due diligence in investigating the Property for hazardous waste. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Specifically without limitation, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

ADA/FHAA Compliance. So long as this Deed of Trust remains outstanding, Grantor will, at its own cost and expense, in respect of the Property and in respect of Grantor's business activities at or within the Property: (a) comply with all requirements of the federal Americans with Disabilities Act (the "ADA") and the federal Fair Housing Amendments Act of 1988 (the "FHAA") and the rules and regulations promulgated thereunder (the "Rules"), to the extent applicable to Grantor's ownership, management, operation, leasing, use, construction, reconstruction, repair, remodeling, rehabilitation, or alteration of the Property or any part thereof; (b) immediately provide to Lender written notice (and copies of) any and all notices of actual, potential, or alleged violations of the ADA, the FHAA, or the Rules and any and all governmental investigations or regulatory actions instituted or threatened against Grantor or the Property or Grantor's business activities at or within the Property regarding the ADA, the FHAA, or the Rules; and (c) furnish to Lender, from time to time whenever reasonably requested by Lender, a Compliance Assessment, in form and substance reasonably satisfactory to Lender, prepared by an architect or engineer with skill, experience, and reputation acceptable to Lender, in the field of compliance with the ADA or the FHAA, as applicable.

Reappraisals. Lender shall have the right to obtain at Grantor's cost and expense reappraisals of the Property from any licensed or certified appraiser designated by Lender, from time to time (a) whenever such reappraisal may be required by any law, rule, or regulation applicable to the conduct of Lender's business, or may be requested or directed by any governmental authority charged with the administration of such law, rule, or regulation or Lender's compliance therewith, whether or not such request or direction has the force of law, or (b) whenever Lender has reasonable cause to believe that the then-current loan-to-value ratio applicable to the loan or loans secured by the Property exceed the original loan-to-value ratio approved by Lender with respect to such loan or loans, or (c) whenever reasonably deemed appropriate by Lender following the occurrence or

during the continuation of an Event of Default. Lender may use the results of such reappraisal to evaluate and restructure such loan or loans if necessary in Lender's reasonable discretion.

DUE ON SALE - CONSENT BY LENDER. Lender may, at its option, (a) declare immediately due and payable all sums secured by this Deed of Trust or (b) increase the interest rate provided in the Note or other document evidencing the indebtedness and impose such other conditions as Lender deems appropriate, upon the sale or transfer, without the Lender's prior written consent which consent shall not be unreasonably withheld, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation or partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock or partnership interests or membership interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are a part of this Deed of Trust.

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, and except as otherwise provided in this Deed of Trust.

Right To Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$5,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, liability, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days'

prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance to the extent such insurance is required and is or becomes available, for the term of the loan and for the full unpaid principal balance of the loan, or the maximum limit of coverage that is available, whichever is less.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$5,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Lender may, at its election, receive and retain the proceeds and apply the same to the reduction of the Indebtedness and/or the payment of any lien affecting the Property, or may apply the proceeds to the repair, restoration and replacement of the Property. In the event Lender elects to apply the insurance proceeds to the repair, restoration and replacement of the Property, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

WARNING

Unless Grantor provides Lender with evidence of the insurance coverage as required herein, Lender may purchase insurance at Grantor's expense to protect Lender's interest. This insurance may, but need not, also protect Grantor's interest. If the Property becomes damaged, the coverage Lender purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

Grantor is responsible for the cost of any insurance purchased by Lender. The cost of this insurance may be added to the Note balance. If the cost is added to the Note balance, the interest rate on the Note will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

The coverage Lender purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

TAX AND INSURANCE RESERVES. Subject to any limitations set by applicable law and if Grantor fails to pay any taxes, assessments or insurance when due, Lender may require Grantor to maintain with Lender reserves for payment of annual taxes, assessments, and insurance premiums, which reserves shall be created by advance payment or monthly payments of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before due, amounts at least equal to the taxes, assessments, and insurance premiums to be paid. If fifteen (15) days before payment is due the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit from Grantor, which Lender may satisfy by payment of

the taxes, assessments, and insurance premiums required to be paid by Grantor as they become due. Lender shall have the right to draw upon the reserve funds to pay such items, and Lender shall not be required to determine the validity or accuracy of any item before paying it. Nothing in the Deed of Trust shall be construed as requiring Lender to advance other monies for such purposes, and Lender shall not incur any liability for anything it may do or omit to do with respect to the reserve account. Subject to any limitations set by applicable law, if the reserve funds disclose a shortage or deficiency, Grantor shall pay such shortage or deficiency as required by Lender. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Lender is hereby authorized to withdraw and apply such amounts on the Indebtedness upon the occurrence of an Event of Default. Lender shall not be required to pay any interest or earnings on the reserve funds unless required by law or agreed to by Lender in writing. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Property also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust.

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. However, Borrower shall be entitled to use the proceeds of any condemnation award to repair or restore the Property in a manner satisfactory to Lender if (a) Borrower is not otherwise in default under this Deed of Trust and (b) upon completion of such repair or restoration, the value of the Property (as determined by Lender in its reasonable discretion) is no less than the value of the Property on the date of this Deed of Trust. If the proceeds are applied to repair or restoration, Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. The net proceeds of the award shall mean the award after payment of all

reasonable costs, expenses, and attorneys' fees, of both the Trustee and Lender in connection with the condemnation.

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (c) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust.

Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Grantor authorizes Lender to file any number of financing statements and take whatever other action is required by Lender to perfect and continue Lender's security interest in the fixtures, Rents, and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust.

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to

effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor and Borrower under the Note, this Deed of Trust, and the Related Documents, and (b) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

PARCEL RELEASE PROVISIONS. Grantor anticipates that it may attempt to sell some of the lots and/or parcels (the "Parcels") comprising the Property to various purchasers. Provided that no Event of Default exists, Grantor shall be entitled to the release of the lien of this Deed of Trust and of any other instrument securing the Note from any such Parcel upon satisfaction of all of the following conditions precedent:

(a) All state, county, municipal or other requirements regarding the sale of the Parcels shall have been satisfied and evidence thereof provided to Lender and a final Property plat has been recorded containing a minimum of 712 legal lots (in the event Grantor requests a partial release of the Property prior to recording of this final plat, the Release Price and release terms shall be determined by Lender in its sole discretion and without reference to paragraph (c) below);

(b) The release shall be in connection with the sale of a Parcel to a bona fide purchaser for value;

(c) The purchaser of a Parcel to be sold shall have paid the full purchase price of that Parcel in cash and Lender shall have been paid the full Release Price equal to the greater of: (1) ninety percent (90%) of the net sales proceeds of the Parcel; (2) seventy-five percent (75%) of the market value of the Parcel as determined by Lender in its reasonable discretion; or (3) such greater percentage as is required to maintain a minimum fifty-five percent (55%) loan to value ratio as determined by Lender in its reasonable discretion. Borrower shall provide to Lender, at Borrower's expense, updated Property appraisals as the Lender may reasonably require at the time of any release request. The Release Price shall be applied as follows: (1) to pay in full the profit participation amount due as set forth in the Note at a rate of \$3,750.00 per Parcel as approved by Lender; (2) to Note principal; and (3) to accruing interest and other charges due. As used herein, "net sales proceeds" shall mean the full purchase price for said Parcel less all customary closing costs not to exceed fifteen percent (15%) of the gross sales price. In the event there are insufficient sales proceeds to pay the Release Price and the profit participation amount required above, Borrower shall pay the shortfall to Lender as an additional condition to said Parcel release.

(d) Lender shall have received such endorsements to its policy of title insurance insuring the lien of this Deed of Trust as Lender may require in its sole discretion;

(e) Lender shall have received a written request for the partial release together with such documents and information as Lender may reasonably request to verify that the conditions for such release have been satisfied, including but not limited to, a copy of the purchase contract and escrow closing statement. After receipt of such notice and the satisfaction of all conditions precedent for the partial release, including, but not limited to, the delivery of the full Release Price, Lender shall deliver to Trustee a standard form "Request for Partial Release," for the Parcel to be released, executed by Lender;

(f) All costs and expenses of Lender relating to all partial releases shall be paid by Grantor, including but not limited to reconveyance fees, title fees, recording fees and legal expenses;

(g) No partial release shall impair or adversely affect Lender's security in the Property remaining subject to this Deed of Trust or any term or provision of this Deed of Trust as it pertains to the Property remaining subject to this Deed of Trust; and

(h) The release of the subject Parcels shall not affect access to the remaining Parcels subject to this Deed of Trust. Without limiting the foregoing, a release of any Parcels surrounding any Parcel lacking access would require as a condition precedent the granting of a non-exclusive easement for access purposes to any Parcel lacking access in form reasonably required by Lender.

FULL PERFORMANCE. If Borrower pays all the Indebtedness when due and terminates the loan, and Grantor otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor shall pay Lender a reasonable reconveyance fee for said reconveyance. The grantee in any such reconveyance may be described as the "person or persons legally entitled thereto."

DEFAULT. Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Deed of Trust:

Default on Indebtedness. Failure of Borrower to make any payment when due on the Indebtedness.

Compliance Default. Failure of Grantor or Borrower to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents or the failure of Borrower or Grantor to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor. If such a non-payment default is curable and if Borrower or Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within thirty (30) days; or (b) if the cure requires more than thirty (30) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance within ninety (90) days after notice is sent.

Breaches. Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor or Borrower under this Deed of Trust, the Note or the Related Documents is, or at the time made or furnished was, false in any material respect.

Insolvency. The insolvency of Borrower or Grantor; appointment of a receiver for any part of Borrower's or Grantor's property; any assignment for the benefit of creditors; the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor; provided, however, that Borrower or Grantor shall have thirty (30) days in which to obtain a dismissal of any such proceedings; or the dissolution or termination of Borrower's or Grantor's existence as a going business (if Borrower or Grantor is a business). Except to the extent prohibited by federal law or state law, the death of Borrower or Grantor (or a member or partner of Borrower or Grantor) also shall constitute an Event of Default under this Deed of Trust; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the deceased's estate to assume unconditionally the obligations arising hereunder in a manner reasonably acceptable to Lender and, in so doing, cure the Event of Default.

Foreclosure, etc. Commencement of foreclosure, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including the failure of this Deed of Trust or any Related Document to create a valid and perfected security interest or lien) at any time and for any reason.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any Guarantor seeks, claims, or otherwise attempts to limit, modify, or revoke such Guarantor's guaranty with Lender or any of the preceding events occurs with respect to any Guarantor or any of the Indebtedness or such Guarantor dies or becomes incompetent; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith deems itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. If this Deed of Trust is foreclosed by judicial foreclosure, Lender will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (a) pay a reasonable rental for the use of the Property, or (b) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Deed of Trust, the Note, in any Related Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Lender's right to declare a default and to exercise any of its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender which in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust.

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of the county in which the Real Property is situated. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page or the Auditor's file number where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES TO GRANTOR AND OTHER PARTIES. Any notice under this Deed of Trust shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class, registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. For notice purposes, Grantor agrees to keep Lender and Trustee informed at all times of Grantor's current address.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Accounts and Records. Grantor will maintain a standard modern system of accounting administered in accordance with generally accepted accounting principles. Lender shall have the right to examine the books of account of Grantor to the extent that they pertain to this Deed of Trust and the Property, and to discuss the affairs, finances, and accounts of Grantor to such extent, all at such reasonable times and intervals as Lender may desire. Grantor will furnish to Lender, (i) within sixty (60) days after and as of the close of each fiscal year, the year-end financial statements of Grantor, including a balance sheet and a statement of earnings (income and loss) from Grantor's business and from the Property, as requested by Lender, in detail satisfactory to Lender; (ii) from time to time and within twenty (20) days following Lender's request therefor, all such financial information as may be necessary or appropriate for Lender's determination of Grantor's net operating income and debt service with all such financial information being prepared and certified as accurate by Grantor; and (iii) from time to time, upon Lender's request, tenant rent rolls, leasing summary reports and cash flow projections (or updates thereof), setting forth the status of all existing and anticipated leases or subleases affecting the Property and Grantor's best estimate of the revenues to be obtained and the expenses to be incurred in connection with the operation of the Property for the following one-year period. In addition to the above, Grantor shall furnish Lender with, as soon as available, but in no event later than ninety (90) days after the end of each fiscal year, copies of Grantor's tax returns.

Applicable Law. This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Washington, except and only to the extent of procedural matters related to the perfection and enforcement by Lender of its rights and remedies against the Property, which matters shall be governed by the laws of the State of Utah. However, in the event that the enforceability or validity of any provision of this Deed of Trust is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Deed of Trust (which secures the Note) has been applied for, considered, approved, and made in the State of Washington. **IF THERE IS A LAWSUIT, GRANTOR AND BORROWER, AT LENDER'S OPTION, AGREE TO SUBMIT TO THE JURISDICTION OF SPOKANE COUNTY, WASHINGTON. LENDER, BORROWER, AND GRANTOR HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER OR GRANTOR OR BORROWER AGAINST THE OTHER.**

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Lender's Right to Sell Participations in the Loan. Lender may at any time sell, assign, transfer, negotiate, grant participations in, or otherwise dispose of, to any one or more other lenders (hereinafter called "Participants") all or any part of the indebtedness of Grantor at any time outstanding under the Note, this Deed of Trust, or any of the Related Documents (collectively, the "Loan Documents"). Grantor acknowledges and agrees that any such disposition will give rise to an obligation of Grantor to each Participant and that, in such event, each Participant shall, for all purposes hereof, be entitled to the benefits of the Loan Documents and all other documents, instruments, and agreements therein described, as its interest may appear. Grantor shall, from time to time at the request of Lender, execute and deliver, or cause to be executed and delivered, to Lender or to such party or parties (including any Participant) as Lender may designate, any and all such further instruments as may in the opinion of Lender be necessary or desirable to give full force and effect to such disposition, including, but not limited to, a new note or new notes to be issued in exchange for the Note and such estoppel certificates or other instruments as may be requested from Grantor to evidence the continuing validity of the Loan Documents and the absence of any default by Lender thereunder. Notwithstanding the foregoing, Grantor acknowledges that no Participant shall be deemed a direct lender or co-lender with Lender.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Multiple Parties. If Grantor or Borrower consist of more than one person or entity, all obligations of Grantor and Borrower under this Deed of Trust shall be joint and several, and all references to Borrower shall mean each and every Borrower, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Deed of Trust. Where any one or more of the parties are corporations or partnerships or limited liability companies, it is not necessary for Lender to inquire into the powers of any of the parties or of the officers, directors, partners, agents, managers or members acting or purporting to act on their behalf.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

Successors and Assigns. Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time Is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waivers and Consents. Lender shall not be deemed to have waived any rights under this Deed of Trust (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor or Borrower, shall constitute a waiver of any of Lender's rights or any of Grantor or Borrower's obligations as to any future transactions. Whenever consent by Lender is required in this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all Indebtedness secured hereby.

WAIVER OF RIGHT OF REDEMPTION. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS DEED OF TRUST, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBJECT TO THE DATE OF THIS DEED OF TRUST.

COMMERCIAL DEED OF TRUST. Grantor agrees with Lender that this Deed of Trust is a commercial deed of trust and that Grantor will not change the use of the Property without Lender's prior written consent.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

3D Construction and Development, L.L.C.,
a Utah limited liability company

By 

James Y. Dixon, Equity Member

By: Ronald Kelly Dixon
Ronald Kelly Dixon, Equity Member

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
County of Davis) ss.

On this 26th day of October, 2001, before me, the undersigned Notary Public, personally appeared James Y. Dixon, Equity Member of 3D Construction and Development, L.L.C., a Utah limited liability company (the "Limited Liability Company"), personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the Limited Liability Company and that he executed the DEED OF TRUST and acknowledged the DEED OF TRUST to be the free and voluntary act and deed of the Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this DEED OF TRUST and in fact executed the DEED OF TRUST on behalf of the Limited Liability Company.

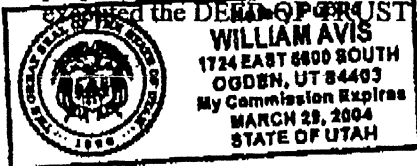


[Signature]
Notary Public for the State of Utah
My commission expires: 3-29-04

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
County of Davis) ss.

On this 26th day of October, 2001, before me, the undersigned Notary Public, personally appeared Ronald Kelly Dixon, Equity Member of 3D Construction and Development, L.L.C., a Utah limited liability company (the "Limited Liability Company"), personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the Limited Liability Company and that he executed the DEED OF TRUST and acknowledged the DEED OF TRUST to be the free and voluntary act and deed of the Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this DEED OF TRUST and in fact executed the DEED OF TRUST on behalf of the Limited Liability Company.



[Signature]
Notary Public for the State of Utah
My commission expires: 3-29-04

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. You are hereby requested, upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you under the Deed of Trust.

Date: _____

Beneficiary: _____

By: _____

Its: _____

Order Number: 20029276 SEVENTH AMEND

LEGAL DESCRIPTION

PARCEL 1

BEGINNING AT A POINT LOCATED 1600.5 FEET SOUTH AND 323.4 FEET WEST OF THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE WEST 3756.6 FEET MORE OR LESS TO A POINT 1200 FEET EAST OF W/L OF SAID SECTION, THENCE SOUTH 2000 FEET PARALLEL TO SAID W/L TO GRANTORS S/L, THENCE EAST 4047 FEET ALONG SAID S/L TO W/L OF 11600 WEST STREET, THENCE NORTH 413.25 FEET ALONG SAID LINE THENCE WEST 290.4 FEET THENCE NORTH 300 FEET, THENCE EAST 290.4 FEET TO W/L OF 11600 WEST STREET, THENCE NORTH 75 FEET ALONG SAID W/L, THENCE WEST 290.4 FEET, THENCE NORTH 1200 FEET TO POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND R/W'S. LESS: PARCELS 05-100-0031, 05-100-0032 AND 05-100-0038. LESS: BEGINNING 2800.5 FEET SOUTH AND 323.4 FEET WEST FROM THE NORTHEAST CORNER OF SECTION 9, WEST 210 FEET, NORTH 150 FEET, WEST 150 FEET, NORTH 450 FEET, EAST 360 FEET, SOUTH 600 FEET TO THE POINT OF BEGINNING, WITH R/W.

PARCEL NO. 05-100-0003

PARCEL 2

BEGINNING AT A POINT 2 RODS WEST OF THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, RUNNING NORTH 2 RODS, WEST 128 1/2 RODS, NORTH 3 RODS, WEST TO SECTION LINE, SOUTH 5 RODS TO THE SOUTHWEST CORNER OF SAID SECTION, EAST TO THE POINT OF BEGINNING. LESS THAT TRACT DEEDED TO PORTER CHRISTENSEN.

PARCEL NO. 05-100-0012

PARCEL 3

LOT 7 AND THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, ALSO LOT 6 AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, ALSO BEGINNING AT A POINT 1893 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION RUNNING SOUTH 757 FEET, EAST 2640 FEET, NORTH 1625.3 FEET, SOUTH 69° 40' EAST 2814.3 FEET TO BEGINNING. ALSO SOUTHEAST QUARTER OF SAID SECTION, LESS THAT CONVEYED TO BOTHWELL ASSOCIATION, LESS: CONVEYED TO PARSON READY MIX COMPANY, EDWIN M. HIGLEY, H. PORTER CHRISTENSEN, LESS: TRACTS CONVEYED, LESS: TRACT DEEDED TO PARSON READY MIX COMPANY LESS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, WEST ALONG THE SECTION LINE 750 FEET, (EAST) 1647.89 FEET, EAST 750 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING. LESS: BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET, WEST 1320 FEET, NORTH 485.94 FEET, EAST 1320 FEET TO THE POINT OF BEGINNING. LESS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 58, BLOCK 2, MARBLE HILL ESTATES AND RUNNING WEST 1880 FEET MORE OR LESS TO THE SOUTH LINE OF WALLACE CHRISTENSEN: THENCE NORTH 69° 40' EAST ALONG SAID LINE OF CHRISTENSEN AND BOYD SOUTH MARBLE TRACTS 2000 FEET MORE OR LESS TO THE EAST LINE OF THE

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NORTHWEST QUARTER; THENCE SOUTH ALONG THE EAST LINE OF SAID NORTHWEST QUARTER SOUTH 0° 16' 52" WEST 700 FEET MORE OR LESS TO THE POINT OF BEGINNING. LESS: TRACT DEEDED TO AMCOR INC., LESS: BEGINNING AT A POINT 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET FROM 88° 00' 09" WEST 244.53 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 8, AND RUNNING THENCE NORTH 88° 00' 09" WEST 1483.62 FEET; THENCE NORTH 0° 23' 40" WEST 1263 FEET; THENCE SOUTH 88° 00' 09" EAST 1492.069 FEET MORE OR LESS TO THE WEST LINE OF PARSONS READY MIX COMPANY PROPERTY, THENCE SOUTH 1263 FEET MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE NORTHERLY 215 FEET OF THE EASTERLY 1640.00 FEET.

PARCEL NO. 05-125-0004

PARCEL 4

BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET THENCE WEST 1320 FEET THENCE NORTH 485.94 FEET, THENCE EAST 1320 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS.

PARCEL NO. 05-125-0016

PARCEL 5

BEGINNING AT A POINT 97 RODS SOUTH OF THE NORTHWEST CORNER OF SECTION 9 TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH ALONG THE SECTION LINE 2000 FEET, EAST 1200 FEET, NORTH PARALLEL TO SECTION LINE 2000 FEET, WEST 1200 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND RIGHT OF WAYS.

LESS AND EXCEPTING THE WESTERLY 315 FEET.

PARCEL NO. 05-100-0037

PARCEL 6

BEGINNING AT A POINT WHICH IS 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET AND NORTH 1263 FEET MORE OR LESS TO THE NORTHEAST CORNER OF PROPERTY COVERED IN TRUST DEED IN FAVOR OF FIRST SECURITY BANK OF UTAH IN BOOK 347, PAGE 683, BOX ELDER COUNTY RECORDS AND RUNNING NORTHERLY 1165.4 FEET MORE OR LESS TO THE SOUTHERLY CORNER OF LOT 51, MARBLE HILL ESTATES; THENCE WESTERLY ALONG SOUTHERLY LINE OF LOTS 51, 52, AND 53 TO THE SOUTHWEST CORNER OF LOT 53, MARBLE HILL ESTATES, NORTH 59° 13' 41" WEST 87.11 FEET, NORTH 0° 16' 51" EAST 189.24 FEET TO THE NORTHWEST CORNER OF LOT 55; THENCE WEST 950 FEET MORE OR LESS THENCE SOUTH 0° 23' 40" EAST 1620 FEET TO THE NORTHWEST CORNER OF PROPERTY

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X COVERED IN TRUST DEEDED RECORDED IN BOOK 347 PAGE 683; THENCE SOUTH 88° 00' 09" EAST 1492.069 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0011

PARCEL 7

X PART OF THE WEST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS NORTH 1465.77 FEET FROM THE SOUTHWEST CORNER OF SECTION 8, AND RUNNING SOUTH 83° 46' 15" EAST 1755.5 FEET TO THE WEST LINE OF PROPERTY COVERED IN TRUST DEED RECORDED IN BOOK 347, PAGE 683; THENCE NORTH 0° 23' 40" WEST 1250 FEET, NORTH 83° 46' 15" WEST 1755.5 FEET MORE OR LESS TO SECTION LINE; SOUTH 1250 FEET MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0012

PARCEL 8

X BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, NORTH 290 FEET, WEST 750 FEET, SOUTH 290 FEET, EAST 750 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0022

PARCEL 9

X PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN. BEGINNING AT A POINT 750 FEET WEST OF THE SOUTHEAST CORNER OF SAID SECTION 8, WEST 1230.98 FEET, NORTH 22° 46' WEST 244.53 FEET, NORTH 1428.4 FEET, EAST 1325.59 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING.

7 TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 07" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT

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X THROUGH A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98 FEET; THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET; THENCE SOUTH 45° WEST 70 FEET, MORE OR LESS, TO THE NORTH LINE OF THE PARSON TRACT AS DEEDED IN BOOK 343, PAGE 606, OF OFFICIAL RECORDS.

PARCEL NO. 05-125-0008

PARCEL 10

X PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, US SURVEY; BEGINNING AT A POINT 290 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 8; RUNNING THENCE NORTH 1357.89 FEET; THENCE WEST 750 FEET; THENCE SOUTH 1357.89 FEET; THENCE EAST 750 FEET, MORE OR LESS, TO PLACE OF BEGINNING.

PARCEL NO. 05-125-0013

PARCEL 11

N BEGINNING AT A POINT 64.5 RODS (1064.25 FEET) SOUTH OF THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH 32.5 RODS (536.25 FEET); THENCE WEST 22 RODS (363 FEET) TO THE TRUE POINT OF BEGINNING; AND RUNNING THENCE WEST 298 RODS (4917 FEET); THENCE NORTH 32.5 RODS (536.25 FEET); THENCE EAST 298 RODS (4917 FEET), TO A POINT 32.5 RODS (536.25 FEET) FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 32.5 RODS (536.25 FEET) TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 05-100-0041

PARCEL 12

✓ A PART OF THE WEST HALF OF THE WEST HALF OF SECTION 10, TOWNSHIP 11 NORTH, RANGE 4 WEST OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF 10400 NORTH AND THE EAST RIGHT-OF-WAY LINE OF 11600 WEST LOCATED NORTH 00° 00' 00" EAST 33.00 FEET AND NORTH 89° 25' 21" EAST 33.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 10; RUNNING THENCE NORTH 00° 00' 00" EAST 5318.24 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE SOUTH RIGHT-OF-WAY LINE OF 11200 NORTH; THENCE NORTH 89° 48' 53" EAST 1295.98 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE EAST LINE OF THE WEST HALF OF SAID WEST HALF; THENCE SOUTH 00° 05' 49" WEST 3936.47 FEET ALONG SAID EAST LINE TO A POINT 13.0 FEET WEST OF THE WEST BANK OF THE BEAR RIVER CANAL; THENCE PARALLEL TO SAID WEST BANK THE FOLLOWING SEVEN COURSES; (1) SOUTH 10° 26' 17" WEST 402.30 FEET; (2) SOUTH 32° 30' 43" WEST 193.36 FEET; (3) SOUTH 39° 09' 43" WEST 195.16 FEET; (4) SOUTH 35° 36' 37" WEST 198.99 FEET; (5) SOUTH 23° 45' 04" WEST 202.17 FEET; (6) SOUTH 13° 37' 20" WEST 181.10 FEET; (7) SOUTH 15° 31' 04" WEST 151.49 FEET TO SAID NORTH RIGHT-OF-WAY LINE; THENCE SOUTH 89° 25' 21" WEST

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708.81 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. LESS THAT ACREAGE LYING WITHIN THE BEAR RIVER CANAL RIGHT-OF-WAY.

TOGETHER WITH A WATER RIGHT IN THE UTAH-IDAHO SUGAR COMPANY CANAL SYSTEM FOR 6 ACRES.

PARCEL NO. 05-101-0001

PARCEL NO. 13

✓ PART OF E/2 OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS WEST 1980.89 FEET AND NORTH 22°46' WEST 245.53 FEET AND NORTH 1428.4 FEET OF THE SOUTHEAST CORNER OF SECTION 8, NORTHERLY 1000 FEET MORE OR LESS TO THE MOST SOUTHERLY CORNER OF LOT 51, MARBLE HILLS ESTATES AND EASTERLY ALONG SOUTHERLY LINE OF MARBLE HILL ESTATES TO THE MOST SOUTHERLY CORNER OF LOT 47, SOUTH 0°16'51" WEST 108 FEET MORE OR LESS TO A FENCE, NORTH 89°01'40" EAST 1640.00 FEET TO SECTION LINE, SOUTH 900 FEET MORE OR LESS TO A POINT WHICH IS EAST OF THE POINT OF BEGINNING. WEST 2075.59 FEET MORE OR LESS TO THE POINT OF BEGINNING, LESS: BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 51, BLOCK 2 MARBLE HILLS ESTATES, NORTH 40°14'11" EAST ALONG SOUTHEASTERLY LINE OF SAID LOT 51 A DISTANCE OF 85.15 FEET TO THE SOUTHWEST CORNER OF LOT 50 OF SAID BLOCK 2 MARBLE HILL ESTATES, NORTH 82°05'57" EAST X ALONG SOUTHERLY LINE OF SAID LOT 50 A DISTANCE OF 65.66 FEET TO THE SOUTHEAST CORNER OF SAID LOT 50, SOUTH 269.69 FEET TO NORTHERLY EDGE OF A 30 FOOT WIDE DIRT FIRE ROAD, ALONG THE NORTH EDGE OF SAID FIRE ROAD FOLLOWING COURSES: 87°47'48" WEST 76.52 FEET, SOUTH 79°46'59" WEST 44.28 FEET TO A POINT SOUTH OF POINT OF BEGINNING A DISTANCE OF 206.46 FEET, NORTH 206.46 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH 30 WATER HOOKUPS TOGETHER WITH ANY AND ALL WATER RIGHTS APPURTENANT TO PROPERTY.

TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 07" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98 FEET; THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET;

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THENCE SOUTH 45° WEST 70 FEET, MORE OR LESS, TO THE NORTH LINE OF THE PARSON
TRACT AS DEEDED IN BOOK 343, PAGE 606, OF OFFICIAL RECORDS.
LESS AND EXCEPTING THE NORTHERLY 315 FEET OF THE EASTERLY 1640 FEET THEREOF.
PARCEL NO. 05-125-0009

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RECORDATION REQUESTED BY:

Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

158729 Bk 0778 Pg 0634
LuAnn Adams, Box Elder County Recorder
10/25/2001 4:23pm FEE: \$4.00 Dep:
Rec'd For: BACKMAN STEWART TITLE SER

WHEN RECORDED MAIL TO:

Old Standard Life Insurance Company,
an Idaho corporation
601 W. 1st Ave., Dept. 171000
Spokane, Washington 99201

SEND TAX NOTICES TO:

3D Construction and Development, L.L.C.,
a Utah limited liability company
116 West 4600 South
Ogden, Utah 84405

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

#20029276

ASSIGNMENT OF RENTS

THIS ASSIGNMENT OF RENTS IS DATED October 25th, 2001, between 3D Construction and Development, L.L.C., a Utah limited liability company, whose address is 116 West 4600 South, Ogden, Utah 84405 (referred to below as "Grantor"), and Old Standard Life Insurance Company, an Idaho corporation, whose address is 601 W. 1st Ave., Dept. 171000, Spokane, Washington 99201 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Box Elder County, State of Utah:

See Exhibit "A" attached hereto and by this reference incorporated herein.

Lender grants to Grantor a license to collect the Rents and profits, which license may be revoked at Lender's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness.

DEFINITIONS. The following words shall have the following meanings when used in this Assignment. Terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Assignment. The word "Assignment" means this Assignment of Rents between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Rents.

Borrower. The word "Borrower" means 3D Construction and Development, L.L.C., a Utah limited liability company. 3D Construction and Development, L.L.C., a Utah limited liability company is also referred to herein as "Grantor".

Event of Default. The words "Event of Default" mean and include any of the Events of Default set forth below in the section titled "Events of Default."

Grantor. The word "Grantor" means Grantor named above.

Indebtedness. The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Assignment or any of the Related Documents, together with interest on such amounts as provided in the Note. In addition, the word "Indebtedness" includes all additional sums due Lender under the terms of the Note, including but not limited to, a profit participation amount of up to an additional sum of Two Million and 00/100 Dollars (\$2,000,000.00).

EXHIBIT

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Lender. The word "Lender" means Old Standard Life Insurance Company, an Idaho corporation, its successors and assigns.

Note. The word "Note" means the promissory note or credit agreement dated _____, 2001, in the original principal amount of Three Million Nine Hundred Five Thousand and 00/100 Dollars (\$3,905,000.00) from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means the real property, and all improvements thereon, described above in the "Assignment" section.

Real Property. The words "Real Property" mean the property, interests and rights described above in the "Property Definition" section.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all rents, revenues, income, issues, and profits from the Property, whether due now or later, including without limitation all Rents from all leases described on any exhibit attached to this Assignment.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF BORROWER UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale. Grantor waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Property, or any delay by Lender in realizing upon the Property. Grantor agrees to remain liable under the Note with Lender, no matter what action Lender takes or fails to take under this Assignment.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment, Borrower shall pay to Lender all amounts secured by this Assignment as they become due, and Grantor shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE RENTS. With respect to the Rents, Grantor represents and warrants to Lender that:

Ownership. Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power, and authority to enter into this Assignment and to assign and convey the Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

LENDER'S RIGHT TO COLLECT RENTS. Lender shall have the right at any time upon an Event of Default under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with applicable state laws and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor and Borrower's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

FULL PERFORMANCE. If Borrower pays all of the Indebtedness when due, and Borrower and Grantor otherwise perform all the obligations imposed upon Grantor under this Assignment, the Note, and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Property also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Assignment:

Default on Indebtedness. Failure of Borrower to make any payment when due on the Indebtedness.

Compliance Default. Failure of Grantor or Borrower to comply with any other term, obligation, covenant or condition contained in this Assignment, the Note or in any of the Related Documents or the failure of Borrower or Grantor to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor. If such a non-payment default is curable and if Grantor or Borrower has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor or Borrower, after Lender sends written notice demanding cure of such failure: (a) cures the failure within thirty (30) days; or (b) if the cure requires more than thirty (30) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance within ninety (90) days after notice is sent.

Breaches. Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor under this Assignment, the Note or the Related Documents is, or at the time made or furnished was, false in any material respect.

Other Defaults. Failure of Borrower or Grantor to comply with any term, obligation, covenant, or condition contained in any other agreement between Borrower or Grantor and Lender.

Insolvency. The insolvency of Borrower or Grantor; appointment of a receiver for any part of Borrower's or Grantor's property; any assignment for the benefit of creditors; the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor; provided, however, that Borrower or Grantor shall have thirty (30) days in which to obtain a dismissal of any such proceedings; or the dissolution or termination of Borrower's or Grantor's existence as a going business (if Borrower or Grantor is a business). Except to the extent prohibited by federal law or state law, the death of Borrower or Grantor (or a member or partner of Borrower or Grantor) also shall constitute an Event of Default under this Assignment; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the deceased's estate to assume unconditionally the obligations arising hereunder in a manner reasonably acceptable to Lender and, in so doing, cure the Event of Default.

Foreclosure, Etc. Commencement of foreclosure, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

Events Affecting Guarantor. Any Guarantor seeks, claims, or otherwise attempts to limit, modify, or revoke such Guarantor's guaranty with Lender or any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or such Guarantor dies or becomes incompetent; provided, however, that if Lender determines in its reasonable discretion that its interests are not materially impaired, Lender shall permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith deems itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Borrower to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in

response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Assignment shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Assignment after failure of Grantor to perform shall not affect Lender's right to declare a default and exercise its remedies under this Assignment.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the Note rate. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent permitted by applicable law. Borrower also will pay any court costs, in addition to all other sums provided by law.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Assignment:

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Applicable Law. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of Washington, except and only to the extent of procedural matters related to the perfection and enforcement by Lender of its rights and remedies against the Property, which matters shall be governed by the laws of the State of Utah. However, in the event that the enforceability or validity of any provision of this Assignment is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Assignment (which secures the Note) has been applied for, considered, approved, and made in the State of Washington. **IF THERE IS A LAWSUIT, GRANTOR AND BORROWER, AT LENDER'S OPTION, AGREE TO SUBMIT TO THE JURISDICTION OF SPOKANE COUNTY, WASHINGTON. LENDER, BORROWER, AND GRANTOR HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER OR GRANTOR OR BORROWER AGAINST THE OTHER.**

Multiple Parties; Corporate Authority. All obligations of Grantor and Borrower under this Assignment shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each of the persons signing below is responsible for all obligations in this Assignment. Where any one or more of the Grantor or Borrowers are corporations or partnerships or limited liability companies, it is not necessary for Lender to inquire into the powers of any of the Grantor or Borrowers or of the officers, directors, partners, members, managers or agents acting or purporting to act on their behalf.

No Modification. Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Assignment by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Assignment to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Assignment in all other respects shall remain valid and enforceable.

Successors and Assigns. Subject to the limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the Indebtedness.

Time Is of the Essence. Time is of the essence in the performance of this Assignment.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all Indebtedness secured by this Assignment.

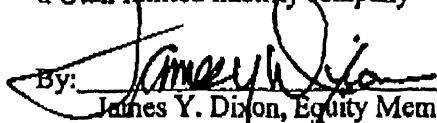
WAIVER OF RIGHT OF REDEMPTION. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBJECT TO THE DATE OF THIS ASSIGNMENT.

Waivers and Consents. Lender shall not be deemed to have waived any rights under this Assignment (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Assignment shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or any of Grantor's obligations as to any future transactions. Whenever consent by Lender is required in this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT OF RENTS, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

3D Construction and Development, L.L.C.,
a Utah limited liability company

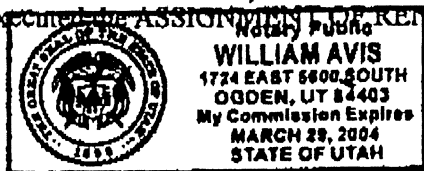
By: 
James Y. Dixon, Equity Member

By: 
Ronald Kelly Dixon, Equity Member

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
 County of Davis) ss.

On this 25th day of October, 2001, before me, the undersigned Notary Public, personally appeared James Y. Dixon, Equity Member of 3D Construction and Development, L.L.C., a Utah limited liability company (the "Limited Liability Company"), personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the Limited Liability Company and that he executed the ASSIGNMENT OF RENTS and acknowledged the ASSIGNMENT OF RENTS to be the free and voluntary act and deed of the Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this ASSIGNMENT OF RENTS and in fact executed the ASSIGNMENT OF RENTS on behalf of the Limited Liability Company.

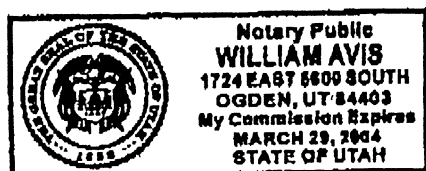


Notary Public for the State of Utah
 My commission expires: 3-29-04

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
 County of Davis) ss.

On this 25th day of October, 2001, before me, the undersigned Notary Public, personally appeared Ronald Kelly Dixon, Equity Member of 3D Construction and Development, L.L.C., a Utah limited liability company (the "Limited Liability Company"), personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the Limited Liability Company and that he executed the ASSIGNMENT OF RENTS and acknowledged the ASSIGNMENT OF RENTS to be the free and voluntary act and deed of the Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this ASSIGNMENT OF RENTS and in fact executed the ASSIGNMENT OF RENTS on behalf of the Limited Liability Company.



Notary Public for the State of Utah
 My commission expires: 3-29-04

SCHEDULE A

158729 Bk 0778 Pg 0641

Order Number: 20029276 SEVENTH AMEND

LEGAL DESCRIPTION**PARCEL 1**

BEGINNING AT A POINT LOCATED 1600.5 FEET SOUTH AND 323.4 FEET WEST OF THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE WEST 3756.6 FEET MORE OR LESS TO A POINT 1200 FEET EAST OF W/L OF SAID SECTION, THENCE SOUTH 2000 FEET PARALLEL TO SAID W/L TO GRANTORS S/L, THENCE EAST 4047 FEET ALONG SAID S/L TO W/L OF 11600 WEST STREET, THENCE NORTH 413.25 FEET ALONG SAID LINE THENCE WEST 290.4 FEET THENCE NORTH 300 FEET, THENCE EAST 290.4 FEET TO W/L OF 11600 WEST STREET, THENCE NORTH 75 FEET ALONG SAID W/L, THENCE WEST 290.4 FEET, THENCE NORTH 1200 FEET TO POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND R/W'S. LESS: PARCELS 05-100-0031, 05-100-0032 AND 05-100-0038. LESS: BEGINNING 2800.5 FEET SOUTH AND 323.4 FEET WEST FROM THE NORTHEAST CORNER OF SECTION 9, WEST 210 FEET, NORTH 150 FEET, WEST 150 FEET, NORTH 450 FEET, EAST 360 FEET, SOUTH 600 FEET TO THE POINT OF BEGINNING, WITH R/W.

PARCEL NO. 05-100-0003

PARCEL 2

BEGINNING AT A POINT 2 RODS WEST OF THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, RUNNING NORTH 2 RODS, WEST 128 1/2 RODS, NORTH 3 RODS, WEST TO SECTION LINE, SOUTH 5 RODS TO THE SOUTHWEST CORNER OF SAID SECTION, EAST TO THE POINT OF BEGINNING. LESS THAT TRACT DEEDED TO PORTER CHRISTENSEN.

PARCEL NO. 05-100-0012

PARCEL 3

LOT 7 AND THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, ALSO LOT 6 AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, ALSO BEGINNING AT A POINT 1893 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION RUNNING SOUTH 757 FEET, EAST 2640 FEET, NORTH 1625.3 FEET, SOUTH 69° 40' EAST 2814.3 FEET TO BEGINNING. ALSO SOUTHEAST QUARTER OF SAID SECTION, LESS THAT CONVEYED TO BOTHWELL ASSOCIATION, LESS: CONVEYED TO PARSON READY MIX COMPANY, EDWIN M. HIGLEY, H. PORTER CHRISTENSEN, LESS: TRACTS CONVEYED, LESS: TRACT DEEDED TO PARSON READY MIX COMPANY LESS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, WEST ALONG THE SECTION LINE 750 FEET, EAST 1647.89 FEET, EAST 750 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING. LESS: BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET, WEST 1320 FEET, NORTH 485.94 FEET, EAST 1320 FEET TO THE POINT OF BEGINNING. LESS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 58, BLOCK 2, MARBLE HILL ESTATES AND RUNNING WEST 1880 FEET MORE OR LESS TO THE SOUTH LINE OF WALLACE CHRISTENSEN: THENCE NORTH 69° 40' EAST ALONG SAID LINE OF CHRISTENSEN AND BOYD SOUTH MARBLE TRACTS 2000 FEET MORE OR LESS TO THE EAST LINE OF THE

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Continuation of Schedule A - Legal Description
 Order Number: 20029276 SEVENTH AMEND

NORTHWEST QUARTER; THENCE SOUTH ALONG THE EAST LINE OF SAID NORTHWEST QUARTER SOUTH 0° 16' 52" WEST 700 FEET MORE OR LESS TO THE POINT OF BEGINNING. LESS: TRACT DEEDED TO AMCOR INC., LESS: BEGINNING AT A POINT 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET FROM 88° 00' 09" WEST 244.53 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 8, AND RUNNING THENCE NORTH 88° 00' 09" WEST 1483.62 FEET; THENCE NORTH 0° 23' 40" WEST 1263 FEET; THENCE SOUTH 88° 00' 09" EAST 1492.069 FEET MORE OR LESS TO THE WEST LINE OF PARSONS READY MIX. COMPANY PROPERTY, THENCE SOUTH 1263 FEET MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE NORTHERLY 215 FEET OF THE EASTERLY 1640.00 FEET.

PARCEL NO. 05-125-0004

PARCEL 4

BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET THENCE WEST 1320 FEET THENCE NORTH 485.94 FEET, THENCE EAST 1320 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS.

PARCEL NO. 05-125-0016

PARCEL 5

BEGINNING AT A POINT 97 RODS SOUTH OF THE NORTHWEST CORNER OF SECTION 9 TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH ALONG THE SECTION LINE 2000 FEET, EAST 1200 FEET, NORTH PARALLEL TO SECTION LINE 2000 FEET, WEST 1200 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND RIGHT OF WAYS.

LESS AND EXCEPTING THE WESTERLY 315 FEET.

PARCEL NO. 05-100-0037

PARCEL 6

BEGINNING AT A POINT WHICH IS 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET AND NORTH 1263 FEET MORE OR LESS TO THE NORTHEAST CORNER OF PROPERTY COVERED IN TRUST DEED IN FAVOR OF FIRST SECURITY BANK OF UTAH IN BOOK 347, PAGE 683, BOX ELDER COUNTY RECORDS AND RUNNING NORTHERLY 1165.4 FEET MORE OR LESS TO THE SOUTHERLY CORNER OF LOT 51, MARBLE HILL ESTATES; THENCE WESTERLY ALONG SOUTHERLY LINE OF LOTS 51, 52, AND 53 TO THE SOUTHWEST CORNER OF LOT 53, MARBLE HILL ESTATES, NORTH 59° 13' 41" WEST 87.11 FEET, NORTH 0° 16' 51" EAST 189.24 FEET TO THE NORTHWEST CORNER OF LOT 55; THENCE WEST 950 FEET MORE OR LESS THENCE SOUTH 0° 23' 40" EAST 1620 FEET TO THE NORTHWEST CORNER OF PROPERTY

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Continuation of Schedule A - Legal Description
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COVERED IN TRUST DEED RECORDED IN BOOK 347 PAGE 683; THENCE SOUTH 88° 00' 09" EAST 1492.069 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0011

PARCEL 7

PART OF THE WEST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS NORTH 1465.77 FEET FROM THE SOUTHWEST CORNER OF SECTION 8, AND RUNNING SOUTH 83° 46' 15" EAST 1755.5 FEET TO THE WEST LINE OF PROPERTY COVERED IN TRUST DEED RECORDED IN BOOK 347, PAGE 683; THENCE NORTH 0° 23' 40" WEST 1250 FEET, NORTH 83° 46' 15" WEST 1755.5 FEET MORE OR LESS TO SECTION LINE; SOUTH 1250 FEET MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0012

PARCEL 8

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, NORTH 290 FEET, WEST 750 FEET, SOUTH 290 FEET, EAST 750 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0022

PARCEL 9

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN. BEGINNING AT A POINT 750 FEET WEST OF THE SOUTHEAST CORNER OF SAID SECTION 8, WEST 1230.98 FEET, NORTH 22° 46' WEST 244.53 FEET, NORTH 1428.4 FEET, EAST 1325.59 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 07" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT

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Continuation of Schedule A - Legal Description
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THROUGH A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98 FEET; THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET; THENCE SOUTH 45° WEST 70 FEET, MORE OR LESS, TO THE NORTH LINE OF THE PARSON TRACT AS DEEDED IN BOOK 343, PAGE 606, OF OFFICIAL RECORDS.

PARCEL NO. 05-125-0008

PARCEL 10

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, US SURVEY: BEGINNING AT A POINT 290 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 8; RUNNING THENCE NORTH 1357.89 FEET; THENCE WEST 750 FEET; THENCE SOUTH 1357.89 FEET; THENCE EAST 750 FEET, MORE OR LESS, TO PLACE OF BEGINNING.

PARCEL NO. 05-125-0013

PARCEL 11

BEGINNING AT A POINT 64.5 RODS (1064.25 FEET) SOUTH OF THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH 32.5 RODS (536.25 FEET); THENCE WEST 22 RODS (363 FEET) TO THE TRUE POINT OF BEGINNING; AND RUNNING THENCE WEST 298 RODS (4917 FEET); THENCE NORTH 32.5 RODS (536.25 FEET); THENCE EAST 298 RODS (4917 FEET), TO A POINT 32.5 RODS (536.25 FEET) FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 32.5 RODS (536.25 FEET) TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 05-100-0041

PARCEL 12

A PART OF THE WEST HALF OF THE WEST HALF OF SECTION 10, TOWNSHIP 11 NORTH, RANGE 4 WEST OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF 10400 NORTH AND THE EAST RIGHT-OF-WAY LINE OF 11600 WEST LOCATED NORTH 00° 00' 00" EAST 33.00 FEET AND NORTH 89° 25' 21" EAST 33.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 10; RUNNING THENCE NORTH 00° 00' 00" EAST 5318.24 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE SOUTH RIGHT-OF-WAY LINE OF 11200 NORTH; THENCE NORTH 89° 48' 53" EAST 1295.98 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE EAST LINE OF THE WEST HALF OF SAID WEST HALF; THENCE SOUTH 00° 05' 49" WEST 3936.47 FEET ALONG SAID EAST LINE TO A POINT 13.0 FEET WEST OF THE WEST BANK OF THE BEAR RIVER CANAL; THENCE PARALLEL TO SAID WEST BANK THE FOLLOWING SEVEN COURSES; (1) SOUTH 10° 26' 17" WEST 402.30 FEET; (2) SOUTH 32° 30' 43" WEST 193.36 FEET; (3) SOUTH 39° 09' 43" WEST 195.16 FEET; (4) SOUTH 35° 36' 37" WEST 198.99 FEET; (5) SOUTH 23° 45' 04" WEST 202.17 FEET; (6) SOUTH 13° 37' 20" WEST 181.10 FEET; (7) SOUTH 15° 31' 04" WEST 151.49 FEET TO SAID NORTH RIGHT-OF-WAY LINE; THENCE SOUTH 89° 25' 21" WEST

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708.81 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. LESS THAT ACREAGE LYING WITHIN THE BEAR RIVER CANAL RIGHT-OF-WAY.

TOGETHER WITH A WATER RIGHT IN THE UTAH-IDAHO SUGAR COMPANY CANAL SYSTEM FOR 6 ACRES.

PARCEL NO. 05-101-0001

PARCEL NO. 13

PART OF E/2 OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS WEST 1980.89 FEET AND NORTH 22°46' WEST 245.53 FEET AND NORTH 1428.4 FEET OF THE SOUTHEAST CORNER OF SECTION 8, NORTHERLY 1000 FEET MORE OR LESS TO THE MOST SOUTHERLY CORNER OF LOT 51, MARBLE HILLS ESTATES AND EASTERLY ALONG SOUTHERLY LINE OF MARBLE HILL ESTATES TO THE MOST SOUTHERLY CORNER OF LOT 47, SOUTH 0°16'51" WEST 108 FEET MORE OR LESS TO A FENCE, NORTH 89°01'40" EAST 1640.00 FEET TO SECTION LINE, SOUTH 900 FEET MORE OR LESS TO A POINT WHICH IS EAST OF THE POINT OF BEGINNING. WEST 2075.59 FEET MORE OR LESS TO THE POINT OF BEGINNING, LESS: BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 51, BLOCK 2 MARBLE HILLS ESTATES, NORTH 40°14'11" EAST ALONG SOUTHEASTER LINE OF SAID LOT 51 A DISTANCE OF 85.15 FEET TO THE SOUTHWEST CORNER OF LOT 50 OF SAID BLOCK 2 MARBLE HILL ESTATES, NORTH 82°05'57" EAST ALONG SOUTHERLY LINE OF SAID LOT 50 A DISTANCE OF 65.66 FEET TO THE SOUTHEAST CORNER OF SAID LOT 50, SOUTH 269.69 FEET TO NORTHERLY EDGE OF A 30 FOOT WIDE DIRT FIRE ROAD, ALONG THE NORTH EDGE OF SAID FIRE ROAD FOLLOWING COURSES: 87°47'48" WEST 76.52 FEET, SOUTH 79°46'59" WEST 44.28 FEET TO A POINT SOUTH OF POINT OF BEGINNING A DISTANCE OF 206.46 FEET, NORTH 206.46 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH 30 WATER HOOKUPS TOGETHER WITH ANY AND ALL WATER RIGHTS APPURTENANT TO PROPERTY.

TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 07" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98 FEET; THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET;

Continued on next page

Continuation of Schedule A C Legal Description
Order Number 20029276 SEVENTH AMEND

158729 Bk 0778 Pg 0646

THENCE SOUTH 45° WEST 70 FEET, MORE OR LESS, TO THE NORTH LINE OF THE PARSON
TRACT AS DEEDED IN BOOK 343, PAGE 1606, OF OFFICIAL RECORDS.
LESS AND EXCEPTING THE NORTHERLY 315 FEET OF THE EASTERLY 1640 FEET THEREOF.

PARCEL NO. 05-125-0009

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

#20029276

158730 Bk 0778 Pg 0647
 LuAnn Adams, Box Elder County Recorder
 10/25/2001 4:26pm FEE: 44.00 Dep:MM
 Rec'd For: BACKMAN STEWART TITLE SER

A. NAME & PHONE OF CONTACT AT FILER (optional)	
Sheila Parpolia (800) 541-0828	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
Old Standard Life Insurance Company, an Idaho corporation Attn: Sheila Parpolia 601 W. 1st Ave., Dept. 171000 Spokane, Washington 99201	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME			
3D Construction and Development, L.L.C.			
OR	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME
			SUFFIX
1c. MAILING ADDRESS		CITY	STATE
116 West 4600 South		Ogden	UT
		POSTAL CODE	COUNTRY
		84405	USA
1d. TAX ID #, EIN OR EIN	ADDL INFO RE ORGANIZATION	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION
87-0570663	DEBTOR	limited liability company	Utah
		1g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE
		351791-5501	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

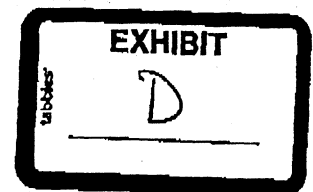
2a. ORGANIZATION'S NAME			
OR	2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME
			SUFFIX
2c. MAILING ADDRESS		CITY	STATE
			POSTAL CODE
			COUNTRY
2d. TAX ID #, EIN OR EIN	ADDL INFO RE ORGANIZATION	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION
	DEBTOR		
		2g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME			
Old Standard Life Insurance Company			
OR	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME
			SUFFIX
3c. MAILING ADDRESS		CITY	STATE
601 W. 1st Ave., Dept. 171000		Spokane	WA
		POSTAL CODE	COUNTRY
		99201	USA

4. This FINANCING STATEMENT covers the following collateral:

See Exhibit "1" attached hereto and by this reference incorporated herein.



5. ALTERNATIVE DESIGNATION (if applicable)	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AQ. LIEN	NON-UCC FILING
6. <input type="checkbox"/> The FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		All Debtors		Debtor 1	Debtor 2

8. OPTIONAL FILER REFERENCE DATA

EXHIBIT 1
To UCC Financing Statement

The word "Collateral" means the following described property of Debtor, whether now owned or hereafter acquired, whether now existing or hereafter arising located on or related to the real property described on Exhibit "A" attached hereto: all fixtures (including trade fixtures), appliances, furnishings, furniture located on or related to the real property and all supplies, equipment, inventory, building materials, and any and all other tangible and intangible personal property of Debtor, including (without limitation) accounts (including accounts receivable and contract rights, whether or not earned by performance), chattel paper, instruments, construction contracts and plans and specifications, water rights and related certificates and shares, documents and general intangibles, lease, tenancy or other occupancy agreements, to the extent any of the foregoing relate to the use, improvement, operation, or leasing of the real property.

The word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (a) All attachments, accessions, increases, and additions to and all replacements of and substitutions for any property described above.
- (b) All products and produce of any of the property described above.
- (c) All accounts, contract rights, general intangibles, instruments, monies, payments, and all other rights, arising out of a sale, lease, or other disposition of any of the property described above.
- (d) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described above.
- (e) All records and data relating to any of the property described above, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Debtor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or electronic media.

SCHEDULE A

Order Number **200292767 SEVENTH AMEND**

158730 Bk 0778 Pg 0649

LEGAL DESCRIPTION

PARCEL 1

BEGINNING AT A POINT LOCATED 1600.5 FEET SOUTH AND 323.4 FEET WEST OF THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE WEST 3756.6 FEET MORE OR LESS TO A POINT 1200 FEET EAST OF W/L OF SAID SECTION, THENCE SOUTH 2000 FEET PARALLEL TO SAID W/L TO GRANTORS S/L, THENCE EAST 4047 FEET ALONG SAID S/L TO W/L OF 11600 WEST STREET, THENCE NORTH 413.25 FEET ALONG SAID LINE THENCE WEST 290.4 FEET, THENCE NORTH 300 FEET, THENCE EAST 290.4 FEET TO W/L OF 11600 WEST STREET, THENCE NORTH 75 FEET ALONG SAID W/L, THENCE WEST 290.4 FEET, THENCE NORTH 1200 FEET TO POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND R/W'S. LESS: PARCELS 05-100-0031, 05-100-0032 AND 05-100-0038. LESS: BEGINNING 2800.5 FEET SOUTH AND 323.4 FEET WEST FROM THE NORTHEAST CORNER OF SECTION 9, WEST 210 FEET, NORTH 150 FEET, WEST 150 FEET, NORTH 450 FEET, EAST 360 FEET, SOUTH 600 FEET TO THE POINT OF BEGINNING. WITH R/W.

PARCEL NO. 05-100-0003

PARCEL 2

BEGINNING AT A POINT 2 RODS WEST OF THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, RUNNING NORTH 2 RODS, WEST 128 1/2 RODS, NORTH 3 RODS, WEST TO SECTION LINE, SOUTH 5 RODS TO THE SOUTHWEST CORNER OF SAID SECTION, EAST TO THE POINT OF BEGINNING. LESS THAT TRACT DEEDED TO PORTER CHRISTENSEN.

PARCEL NO. 05-100-0012

PARCEL

LOT 7 AND THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, ALSO LOT 6 AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, ALSO BEGINNING AT A POINT 1893 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION RUNNING SOUTH 757 FEET, EAST 2640 FEET, NORTH 1625.3 FEET, SOUTH 69° 40' EAST 2814.3 FEET TO BEGINNING. ALSO SOUTHEAST QUARTER OF SAID SECTION, LESS THAT CONVEYED TO BOTHWELL ASSOCIATION, LESS: CONVEYED TO PARSON READY MIX COMPANY, EDWIN M. HIGLEY, H. PORTER CHRISTENSEN, LESS: TRACTS CONVEYED, LESS: TRACT DEEDED TO PARSON READY MIX COMPANY LESS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, WEST ALONG THE SECTION LINE 750 FEET, EAST 1647.89 FEET, EAST 750 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING, LESS: BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET, WEST 1320 FEET, NORTH 485.94 FEET, EAST 1320 FEET TO THE POINT OF BEGINNING, LESS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 58, BLOCK 2, MARBLE HILL ESTATES AND RUNNING WEST 1880 FEET MORE OR LESS TO THE SOUTH LINE OF WALLACE CHRISTENSEN, THENCE NORTH 69° 40' EAST ALONG SAID LINE OF CHRISTENSEN AND BOYD SOUTH MARBLE TRACTS 2000 FEET MORE OR LESS TO THE EAST LINE OF THE

Continued on next page

NORTHWEST QUARTER, THENCE SOUTH ALONG THE EAST LINE OF SAID NORTHWEST QUARTER SOUTH 0° 16' 52" WEST 700 FEET MORE OR LESS TO THE POINT OF BEGINNING. LESS: TRACT DEEDED TO AMCOR INC., LESS: BEGINNING AT A POINT 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET FROM 88° 00' 09" WEST 244.53 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 8, AND RUNNING THENCE NORTH 88° 00' 09" WEST 1493.62 FEET, THENCE NORTH 0° 23' 40" WEST 1263 FEET, THENCE SOUTH 88° 00' 09" EAST 1493.069 FEET MORE OR LESS TO THE WEST LINE OF PARSONS READY MIX COMPANY PROPERTY, THENCE SOUTH 1263 FEET MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE NORTHERLY 215 FEET OF THE EASTERLY 1640.00 FEET.

PARCEL NO. 05-125-0004

PARCEL 4

BEGINNING AT THE NORTHWEST CORNER OF LOT 57, MARBLE HILL ESTATES SUBDIVISION, SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISION 485.94 FEET THENCE WEST 1320 FEET THENCE NORTH 485.94 FEET, THENCE EAST 1320 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS.

PARCEL NO. 05-125-0016

PARCEL 5

BEGINNING AT A POINT 97 RODS SOUTH OF THE NORTHWEST CORNER OF SECTION 9 TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH ALONG THE SECTION LINE 2000 FEET, EAST 1200 FEET, NORTH PARALLEL TO SECTION LINE 2000 FEET, WEST 1200 FEET TO THE POINT OF BEGINNING. SUBJECT TO EXISTING ROADS AND RIGHT OF WAYS.

LESS AND EXCEPTING THE WESTERLY 315 FEET.

PARCEL NO. 05-100-0037

PARCEL 6

BEGINNING AT A POINT WHICH IS 1980.98 FEET WEST AND NORTH 22° 46' WEST 244.53 FEET AND NORTH 1263 FEET MORE OR LESS TO THE NORTHEAST CORNER OF PROPERTY COVERED IN TRUST DEED IN FAVOR OF FIRST SECURITY BANK OF UTAH IN BOOK 347, PAGE 683, BOX ELDER COUNTY RECORDS AND RUNNING NORTHERLY 1165.4 FEET MORE OR LESS TO THE SOUTHERLY CORNER OF LOT 51, MARBLE HILL ESTATES, THENCE WESTERLY ALONG SOUTHERLY LINE OF LOTS 51, 52, AND 53 TO THE SOUTHWEST CORNER OF LOT 53, MARBLE HILL ESTATES, NORTH 59° 13' 41" WEST 87.11 FEET, NORTH 0° 16' 51" EAST 189.24 FEET TO THE NORTHWEST CORNER OF LOT 55, THENCE WEST 950 FEET MORE OR LESS THENCE SOUTH 0° 23' 40" EAST 1620 FEET TO THE NORTHWEST CORNER OF PROPERTY

Continued on next page

Continuation of Schedule A Legal Description
 Order Number 20029276 SEVENTH AMEND

COVERED IN TRUST DEED RECORDED IN BOOK 347 PAGE 683; THENCE SOUTH 88° 00' 09" EAST 1492.069 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0011

PARCEL 7

PART OF THE WEST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS NORTH 1465.77 FEET FROM THE SOUTHWEST CORNER OF SECTION 8, AND RUNNING SOUTH 83° 46' 15" EAST 1755.5 FEET TO THE WEST LINE OF PROPERTY COVERED IN TRUST DEED RECORDED IN BOOK 347, PAGE 683; THENCE NORTH 0° 23' 40" WEST 1250 FEET, NORTH 83° 46' 15" WEST 1755.5 FEET MORE OR LESS TO SECTION LINE; SOUTH 1250 FEET MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0012

PARCEL 8

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, NORTH 290 FEET, WEST 750 FEET, SOUTH 290 FEET, EAST 750 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 05-125-0022

PARCEL 9

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT 750 FEET WEST OF THE SOUTHEAST CORNER OF SAID SECTION 8, WEST 1230.98 FEET, NORTH 22° 46' WEST 244.53 FEET, NORTH 1428.94 FEET, EAST 1325.59 FEET, SOUTH 1647.89 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY; BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION, SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 40" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT

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Continuation of Schedule A - Legal Description
Order Number: 20029276 SEVENTH AMEND

THROUGH A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98 FEET; THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET; THENCE SOUTH 45° WEST 70 FEET, MORE OR LESS, TO THE NORTH LINE OF THE PARSON TRACT AS DEEDED IN BOOK 343, PAGE 606, OF OFFICIAL RECORDS.

PARCEL NO. 05-125-0008

PARCEL 10

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, US SURVEY; BEGINNING AT A POINT 290 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 8; RUNNING THENCE NORTH 1357.89 FEET; THENCE WEST 750 FEET; THENCE SOUTH 1357.89 FEET; THENCE EAST 750 FEET, MORE OR LESS, TO PLACE OF BEGINNING.

PARCEL NO. 05-125-0013

PARCEL 11

BEGINNING AT A POINT 64.5 RODS (1064.25 FEET) SOUTH OF THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, THENCE SOUTH 32.5 RODS (536.25 FEET); THENCE WEST 22 RODS (363 FEET) TO THE TRUE POINT OF BEGINNING; AND RUNNING THENCE WEST 298 RODS (4917 FEET); THENCE NORTH 32.5 RODS (536.25 FEET); THENCE EAST 298 RODS (4917 FEET), TO A POINT 32.5 RODS (536.25 FEET) FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 32.5 RODS (536.25 FEET) TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 05-100-0041

PARCEL 12

A PART OF THE WEST HALF OF THE WEST HALF OF SECTION 10, TOWNSHIP 11 NORTH, RANGE 4 WEST, OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF 10400 NORTH AND THE EAST RIGHT-OF-WAY LINE OF 11600 WEST LOCATED NORTH 00° 00' 00" EAST 33.00 FEET AND NORTH 89° 25' 21" EAST 33.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 10; RUNNING THENCE NORTH 00° 00' 00" EAST 5318.24 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE SOUTH RIGHT-OF-WAY LINE OF 11200 NORTH; THENCE NORTH 89° 48' 53" EAST 1295.98 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE EAST LINE OF THE WEST HALF OF SAID WEST HALF; THENCE SOUTH 00° 05' 49" WEST 3936.47 FEET ALONG SAID EAST LINE TO A POINT 1310 FEET WEST OF THE WEST BANK OF THE BEAR RIVER CANAL; THENCE PARALLEL TO SAID WEST BANK THE FOLLOWING SEVEN COURSES; (1) SOUTH 10° 26' 17" WEST 402.30 FEET; (2) SOUTH 32° 30' 43" WEST 193.36 FEET; (3) SOUTH 39° 09' 43" WEST 195.16 FEET; (4) SOUTH 35° 36' 37" WEST 198.99 FEET; (5) SOUTH 23° 45' 04" WEST 202.17 FEET; (6) SOUTH 13° 37' 20" WEST 181.10 FEET; (7) SOUTH 15° 31' 04" WEST 151.49 FEET TO SAID NORTH RIGHT-OF-WAY LINE; THENCE SOUTH 89° 25' 21" WEST

Continued on next page

708.81 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. LESS THAT ACREAGE LYING WITHIN THE BEAR RIVER CANAL RIGHT-OF-WAY.

TOGETHER WITH A WATER RIGHT IN THE UTAH-IDAHO SUGAR COMPANY CANAL SYSTEM FOR 6 ACRES.

PARCEL NO. 05-101-0001

PARCEL NO. 13

PART OF E/2 OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE MERIDIAN, BEGINNING AT A POINT WHICH IS WEST 1980.89 FEET AND NORTH 22°46' WEST 245.53 FEET AND NORTH 1428.4 FEET OF THE SOUTHEAST CORNER OF SECTION 8, NORTHERLY 1000 FEET MORE OR LESS TO THE MOST SOUTHERLY CORNER OF LOT 51, MARBLE HILLS ESTATES AND EASTERLY ALONG SOUTHERLY LINE OF MARBLE HILL ESTATES TO THE MOST SOUTHERLY CORNER OF LOT 47, SOUTH 0°16'51" WEST 108 FEET MORE OR LESS TO A FENCE, NORTH 89°01'40" EAST 1640.00 FEET TO SECTION LINE, SOUTH 900 FEET MORE OR LESS TO A POINT WHICH IS EAST OF THE POINT OF BEGINNING. WEST 2075.59 FEET MORE OR LESS TO THE POINT OF BEGINNING, LESS: BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 51, BLOCK 2 MARBLE HILLS ESTATES, NORTH 40°14'11" EAST ALONG SOUTHEASTER LINE OF SAID LOT 51 A DISTANCE OF 85.15 FEET TO THE SOUTHWEST CORNER OF LOT 50 OF SAID BLOCK 2 MARBLE HILL ESTATES, NORTH 82°05'57" EAST ALONG SOUTHERLY LINE OF SAID LOT 50 A DISTANCE OF 65.66 FEET TO THE SOUTHEAST CORNER OF SAID LOT 50, SOUTH 269.69 FEET TO NORTHERLY EDGE OF A 30 FOOT WIDE DIRT FIRE ROAD, ALONG THE NORTH EDGE OF SAID FIRE ROAD FOLLOWING COURSES: 87°47'48" WEST 76.52 FEET, SOUTH 79°46'59" WEST 44.28 FEET TO A POINT SOUTH OF POINT OF BEGINNING A DISTANCE OF 206.46 FEET, NORTH 206.46 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH 30 WATER HOOKUPS TOGETHER WITH ANY AND ALL WATER RIGHTS APPURTENANT TO PROPERTY.

TOGETHER WITH A 60 FOOT RIGHT OF WAY THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: PART OF SECTION 8, TOWNSHIP 11 NORTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY; BEGINNING AT A POINT WHICH IS SOUTH 89° 01' 40" WEST 33 FEET FROM THE SOUTHWEST CORNER OF LOT 27, MARBLE HILL ESTATE SUBDIVISION, SAID POINT ALSO BEING SOUTH 0° 01' 07" EAST 2720.21 FEET AND SOUTH 89° 01' 40" WEST 609.86 FEET AND RUNNING THENCE SOUTH 0° 58' 20" EAST 10.85 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 653.65 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14° 35' 37" CHORD 166.04 FEET A DISTANCE OF 166.49 FEET; THENCE SOUTH 15° 33' 57" EAST 136.17 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 666.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 11' 07" CHORD 279.25 FEET A DISTANCE OF 281.34 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 150 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 43° 42' 03" CHORD 111.65 FEET A DISTANCE OF 114.41 FEET; THENCE SOUTHERLY ALONG THE ARC OF A 378.11 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 22° 07' 17" CHORD 145.08 FEET A DISTANCE OF 145.98 FEET; THENCE SOUTH 15° 34' 24" EAST 110 FEET; THENCE SOUTH 89° WEST 500 FEET;

Continued on next page

Continuation of Schedule A - Legal Description
Order Number: 20029276 SEVENTH AMEND

158730 Bk 0778 Pg 0654

THENCE SOUTH 45° WEST 70 FEET, MORE OR LESS, TO THE NORTH LINE OF THE PARSON
TRACT AS DEEDED IN BOOK 343, PAGE 606, OF OFFICIAL RECORDS.
LESS AND EXCEPTING THE NORTHERLY 315 FEET OF THE EASTERLY 1640 FEET THEREOF.
PARCEL NO. 05-125-0009

Exhibit

“E”

Nov 27 2 04 PM '02

Prepared and Submitted by:

Blake D. Miller (#4090)
Craig H. Howe (#7552)
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Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001

Attorneys for Ocwen Federal Bank, as authorized
agent and servicer for Old Standard Life Insurance Company.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:)	
)	Bankruptcy Case No. 02-36108
3D CONSTRUCTION &)	
DEVELOPMENT, LLC,)	Chapter 7
)	Hon. Judith A. Boulden
Debtor.)	

**ORDER GRANTING
MOTION FOR RELIEF FROM AUTOMATIC STAY**

On November 6, 2002, Ocwen Federal Bank, as authorized agent and servicer for Old Standard Life Insurance Company ("Old Standard"), filed a Motion for Relief from Automatic Stay and served notice of the Motion on all parties of interest. No written objections to the Motion have been filed with the Court pursuant to Local Rule 4001-1(b). Accordingly, having reviewed the Motion, the time for filing objections having expired, and good cause appearing,

IT IS HEREBY ORDERED as follows:

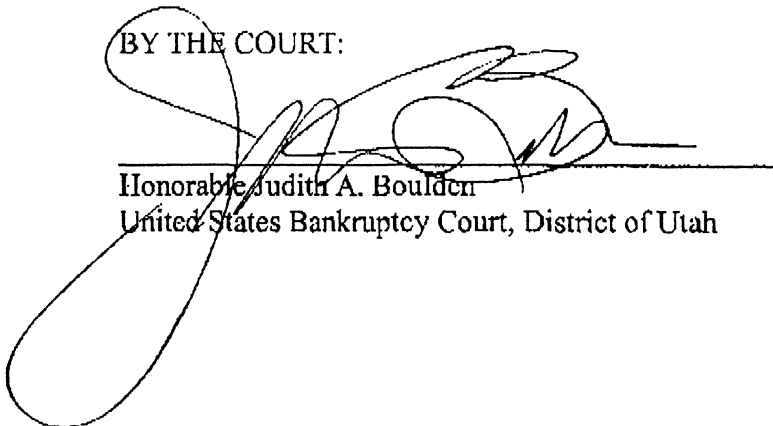


1. The automatic stay shall be, and hereby is, terminated to allow Old Standard to assert its state law rights and remedies in and to the property described in the Deed of Trust attached as Exhibit "B" to the Motion.

2. The ten-day stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is hereby waived, and this Order shall be, and hereby is made, effective upon entry.

DATED this 3 day of Dec 2002.

BY THE COURT:



Honorable Judith A. Boulden
United States Bankruptcy Court, District of Utah

CERTIFICATE OF SERVICE

I hereby certify that, on the 3 day of Dec 2002, I caused a true and correct copy of the foregoing **ORDER GRANTING MOTION FOR RELIEF FROM AUTOMATIC STAY** to be served by first class mail, postage prepaid, on the following:

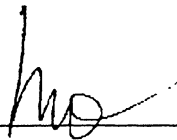
United States Trustee
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Salt Lake City, Utah 84111-2147

David L. Miller
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Barnes Bank Building
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Layton, Utah 84041

3D Construction & Development, LLC
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Washington Terrace, Utah 84405

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205 26th Street
Suite 34
Ogden, Utah 84401

Blake D. Miller
Craig H. Howe
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
201 South Main Street, Suite 600
Salt Lake City, Utah 84111-2221



Exhibit

“F”

IN THE FIRST JUDICIAL DISTRICT COURT
BOX ELDER COUNTY - STATE OF UTAH

3D CONSTRUCTION and DEVELOPMENT,
LLC,

Plaintiff,

vs.

OLD STANDARD LIFE INSURANCE
COMPANY, OCWEN LOAN SERVICING,
LLC, and PAXTON R. GUYMON, as
successor trustee,

Defendants.

MEMORANDUM DECISION

Case No. 030100028

OLD STANDARD LIFE INSURANCE
COMPANY,

Counterclaim Plaintiff,

vs.

3D CONSTRUCTION and DEVELOPMENT,
LLC, A Utah limited liability company;
JAMES Y. DIXON, an individual;
and RONALD K. DIXON, an individual,

Counterclaim Defendant.

Judge Ben H. Hadfield

THIS MATTER is before the Court on Old Standard's motion for summary judgment. 3D responded by memorandum. Having reviewed the memoranda in support and opposition and held oral argument, the Court now issues this decision.

I. Background

On October 25, 2001 a loan was made to 3D by Old Standard. The loan was secured by property located in Box Elder County, Utah. In January, 2002 the loan went into default. After a delay of sale, Old Standard scheduled a trustee's sale of the property securing the loan. Two days

before the sale of the property 3D filed a petition for relief under Chapter 7. United States Bankruptcy Code. The only creditor listed on 3D's "Schedule D-Creditors Holding Secured Claims" was Old Standard and the amount of claim was \$6,500,000. Old Standard moved for relief from the bankruptcy automatic stay. 3D did not oppose the motion for relief from the stay. The bankruptcy court granted relief to Old Standard. After obtaining relief from the stay, Old Standard scheduled another trustee's sale of the property on January 3, 2003. The January, 2003 sale was delayed again by 3D filing a motion for a preliminary injunction with this Court. This Court denied 3D's motion, finding that 3D was judicially and collaterally estopped from claiming the amount owed was less than \$6,500,000. At a hearing on this matter on October 9, 2003, Old Standard converted its summary judgment motion to one for partial summary judgment, reserving the issue of property value.

II. Res Judicata

Res judicata is defined by *Blacks Law Dictionary*, 6th ed. 1990 as "[a] matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. [The] Rule [is] that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." The Utah Supreme Court has stated that "the doctrine of res judicata serves the important policy of preventing previously litigated issues from being relitigated. Res judicata encompasses two distinct doctrines: claim preclusion and issue preclusion." *Snyder v Murray City Corp*, 2003 UT 13; 73 P.3d 325 (Utah 2003) (quoting *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6; 44 P.3d 663 (internal citations omitted)). The Utah Supreme Court has also stated that "[t]he doctrine of res judicata describes the binding of a previous adjudication

on a current adjudication.” *Culbertson v. Bd. of County Comm’ners*, 2001 UT 108; 44 P.3d 642 (Utah 2001) (quoting 18 Charles Alan Wright et al., *Federal Practice and Procedure* § 4402 (1981)). The Utah Supreme Court “has used the general term ‘res judicata’ as an umbrella to refer to two distinct branches of the doctrine: claim preclusion and issue preclusion.” *Id.* (quoting *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93; 16 P.3d 1214). Further, “[a]lthough both branches of res judicata ‘serve the important policy of preventing previously litigated issues from being relitigated,’ different rules apply to each.” *Id.* (again quoting *Macris & Assocs., Inc.*). Also, “we [the Utah Supreme Court] will use the term ‘claim preclusion’ to refer to the branch which has often been referred to as ‘res judicata’ or ‘merger and bar.’ And we use the term ‘issue preclusion’ to refer to the branch often termed ‘collateral estoppel.’” *Murdock v. Springville Municipal Corp.*, 1999 UT 39; 982 P.2d 65 (Utah 1999). For purposes of clarity, each type of res judicata will be examined separately below.

A. Claim preclusion (res judicata)

Claim preclusion, “in general terms . . . bars a party from prosecuting in a subsequent action a claim that has previously been fully litigated. For claim preclusion to bar a claim in a subsequent action, (1) the subsequent action must involve the same parties, their privies, or their assigns as the first action, (2) the claim to be barred must have been brought or have been available in the first action, and (3) the first action must have produced a final judgment on the merits of the claim. *Culbertson*, 44 P.3d 642 at 649 (quoting *Fitzgerald v. Corbett*, 793 P.2d 356 (Utah 1990)).

In Old Standard’s principle memorandum, and in its reply, Old Standard argues that issue preclusion (collateral estoppel) is the proper standard against which to examine the case before the Court. 3D, in its responsive memorandum, states at page 14 that “Old Standard correctly recognizes

in its Memorandum that the issue in this dispute is one of ‘issues preclusion’ (collateral estoppel), and it correctly states the Utah rule.” The Court agrees that claim preclusion does not apply to the case before it. The facts of the case will not be applied to res judicata (claim preclusion).

B. Issue preclusion (collateral estoppel)

In order for an issue to be precluded under this doctrine,

four criteria must be met: (i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action; (iii) the issue in the first action must have been completely.¹ fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits.

Culbertson, 44 P.3d 642 at 650 (quoting *Murdock*, 982 P.2d 65).

As applied to the facts of the case before the Court, it is seen that the first factor is fulfilled. Each of the parties before the Court on Old Standard’s motion for summary judgment were the parties in the previous actions in the bankruptcy court and 3D’s preliminary injunction motion.

As to the second factor, the issue decided in the relief from stay action was the amount of the claim asserted against 3D by Old Standard. The amount of the claim was affirmed as \$6,500,000

¹Of interest is usage of the two very different words “competently” and “completely” in opinions utilizing this test. At some point the original “*competently*, fully, and fairly. . .”, as provided in *Searle Bros. v. Searle*, 588 P.2d 689 (Utah 1978) (where the court added the fourth factor, “was the issue in the first case competently, fully, and fairly litigated?”) (citing *Teitelbaum Furs, Inc., v. Dominion Ins. Co.*, 375 P.2d 439 (Cal. 1962), was changed to “*completely*, fully, and fairly litigated” in some later opinions. A non-definitive list of Utah cases and their uses of either word is as follows; *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387 (Utah Ct. App. 1987) “competently” (citing *Searle Bros. v. Searle*, 588 P.2d 689); *Career Serv. Review Bd. v. Utah Dept of Corrections*, 942 P.2d 933 (Utah 1997) “completely” (also citing *Searle Bros. v. Searle*, 588 P.2d 689); *Murdock v. Springville Mun. Corp.*, 982 P.2d 65 (Utah 1999) “completely” (citing *Career Serv. Review Bd. v. Utah Dept of Corrections*, 942 P.2d 933 (Utah 1997)); ” *Culbertson v. Bd. of County Comm’ners*, 2001 UT 108; 44 P.3d 642 (Utah 2001) “completely” (citing *Murdock*, 982 P.2d 65) (citing *Career Serv. Review Bd.* at 938)); *Collins v. Sandy City Board of Adjustment*, 52 P.3d 1267 (Utah 2002) “completely” (citing *In re Rights to Use of All Water*, (*Murdock*, 982 P.2d 65)).

by 3D's filing. The "amount of claim" issue is the same issue previously decided by the bankruptcy court judge.

Factor three is the main legal point of contention between the parties. 3D argues that this factor requires an actual litigation of the issues, not merely the opportunity to litigate. 3D then carries this argument to its next logical step claiming that because it did not oppose Old Standard's motion for relief from stay, that the issue was not actually litigated. Old Standard argues that the "opportunity to litigate" is sufficient to fulfill factor three of the issue preclusion test. The requirement that the previous "issue was competently, fully, and fairly litigated . . . stems from fundamental due process and requires that litigants have their day in court." *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387 (Utah Ct. App. 1987) (where actions taken by a bankruptcy court were res judicata under issue preclusion) (citing *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-329 (1971). "For purposes of due process, the parties must receive notice reasonably calculated, under all the circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 391 (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950) (other citations omitted)). Attached as "exhibit F" to Old Standard's *Memorandum in Support of Motion for Summary Judgment of Old Standard Life Insurance Company* is its motion for relief from the bankruptcy automatic stay. Attached to the motion for relief is a mailing certificate attesting to the fact that 3D received notice of the motion. Notice of the motion in the bankruptcy action afforded 3D the opportunity to litigate its objections at a hearing concerning relief from the stay. Old Standard did not avail itself of that opportunity, preferring to let Old Standard's motion go unopposed. Because 3D had notice of Old Standard's motion for relief from stay, fundamental due process was satisfied and therefore 3D's

prior representation to the bankruptcy court was “competently, fully, and fairly litigated.” *Id.*

Factor four of the issue preclusion test requires that the first suit result in a final judgement on the merits. The issue here is whether the bankruptcy court granting relief from the automatic stay was a “final adjudication on the merits” of the matter before the Court. A final adjudication on the merits does not require a complete trial of all the facts in issue. As was stated in *Press Publishing, Ltd., v. Matol Botanical International*, 37 P.2d 1121, 1129 (Utah 2001) “[u]nder Utah case law, ‘an arrangement confirmed by a bankruptcy court has the effect of a judgment entered by a federal district court . . . [and] is final for purposes of res judicata until reversed on appeal or modified or set aside in the court of rendition’” (quoting *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387 at 390).² The bankruptcy court order granting relief from stay appears to be a final adjudication of the issue of the amount owed to Old Standard.

III. Judicial estoppel

In *Blacks Law Dictionary*, 6th ed. 1990 “judicial estoppel” is defined as follows; “[u]nder the doctrine of ‘judicial estoppel,’ a party is bound by his judicial declarations and may not contradict them in a subsequent proceeding involving the same issues and parties Under this doctrine, a party who by his pleadings, statements or contentions, under oath, has assumed a particular position in a judicial proceeding is estopped to assume an inconsistent position in a subsequent action.” In Utah, “[t]he principle of judicial estoppel prevents a party from seeking judicial relief by offering statements inconsistent with its own sworn statement in a prior judicial proceeding.” *Salt Lake City*

²*Press Publishing, Ltd., v. Matol Botanical International*, 37 P.2d 1121, 1129 deals with a claim preclusion issue. On the other hand, *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387 deals with issue preclusion. Apparently, the final adjudication on the merits prong of either test is the same.

v. Silver Fork Pipeline Corp., 913 P.2d 731 (Utah 1995) (citing *Condas v. Condas*, 618 P.2d 491 (Utah 1980)). “[A] person may not, to the prejudice of another person deny any position taken in a prior judicial proceeding between the same persons or their privies involving the same subject matter, if such prior position was successfully maintained.” *Id.* (quoting *Tracy Loan & Trust Co. v. Openshaw Inv. Co.*, 132 P.2d 388, 390 (Utah 1942)).

Old Standard will be prejudiced in its defense of the suit against it if 3D is allowed to get around the amount of money it listed as a claim in its bankruptcy. The subject matter is the same, namely, the amount of the debt owed to Old Standard. This leaves the issue of whether the prior action was successfully maintained.

In order to have successfully maintained its action in the bankruptcy suit, it is not necessary that a discharge occur. In fact, as pointed out by 3D, a business entity is ineligible for bankruptcy relief in the form of a discharge. Instructive on this point is *Stevenson v. Goodson*, 924 P.2d 339 at 353. In that case judicial estoppel did not apply to district court proceedings because the valuation of a property was not successfully maintained in a former bankruptcy action. The “bankruptcy court judge found that the property’s value was far less” than the amount the party seeking estoppel desired. By contrast, in the case before the Court today, the amount in controversy was represented to the bankruptcy court as an undisputed debt owed. When the creditor moved for relief from the bankruptcy automatic stay, the debtor did not oppose that motion, and granted relief. In order to come to that conclusion, the bankruptcy court found “good cause.”³ Circumstances under which a

³Order by The Honorable Judith A. Boulden. Bankruptcy Court Judge.

bankruptcy court may grant relief from the stay are identified in the statute.⁴ 3D represented a certain amount of undisputed debt owed to creditor Old Standard. When Old Standard moved for relief from the automatic stay, 3D left it alone. Because the bankruptcy court judge accepted that amount and granted relief from the stay, 3D's action was successfully maintained.

IV. Law of the case doctrine

Having received relief from 3D's automatic bankruptcy stay, Old Standard set up a trustee's sale of the disputed property on January 3, 2003. That sale was delayed by 3D's filing of a motion for a preliminary injunction with the First Judicial District Court. In a memorandum decision this Court ruled that 3D was judicially and collaterally estopped from claiming that the amount of money owed was less than \$6,500,000. In the summary judgment motion before the Court today Old Standard argues that the law of the case doctrine applies and that the Court's previous ruling regarding judicial and collateral estoppel controls its decision today.

According to the Utah Supreme Court,

[t]he "law of the case" is a legal doctrine under which a decision made on an issue during one stage of a case is binding in successive stages of the same litigation. *Plumb v. State*, 809 P.2d 734 (Utah 1990). The doctrine was developed in the interest of economy and efficiency to avoid the delays and difficulties involved in repetitious contentions and reconsideration of rulings on matters previously decided in the same case. *Richardson v. Grand Central Corp.*, 572 P.2d 395, 397 (Utah 1977) (other citations omitted) . . .

⁴¹¹ USCS § 362(d) provides for relief from the automatic stay; "(d) On request of a party in interest and after notice and a hearing, [Local Rule 4001-1(b) provides for relief with no hearing if no response is made to a creditors motion for relief] the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay— (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; (2) with respect to a stay of an act against property under subsection (a) of this section, if—(A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization. . . ."

[under the type of “law of the case” before the Court] a court is justified in refusing to reconsider matters it resolved in a prior ruling in the same case for reasons of efficiency and consistency. The doctrine is not a limit on power but, “as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided.” *Messenger v. Anderson*, 225 U.S. 436, 444 (1912). . . . The . . . circumstances under which courts have reopened issues previously decided are narrowly defined: (1) when there has been an intervening change of controlling authority; (2) when new evidence has become available; or (3) when the court is convinced that its prior decision was clearly erroneous and would work a manifest injustice. *United States v. Rivera-Martinez*, 931 F.3d 148 (1st Cir.) cert. denied (other citations omitted).

Thurston v. Box Elder County, 892 P.2d 1034 (Utah 1995). Further, “although the [law of the case] doctrine is not an inexorable command that rigidly binds a court to its former decisions, it is waived only for the most cogent of reasons.” *Gildea v. Guardian Title Co.*, 2001 UT 75; 31 P.3d 543 (Utah 2001) (referring to the three factors in *Thurston*, 893 P.2d 1034, *supra*).

3D has presented no evidence of “an intervening change of controlling authority,” or any new evidence, *Thurston*. This leaves the Court with a determination concerning whether its prior decision “was clearly erroneous and would work a manifest injustice.” *Id.*

Of concern to the Court, as regards the “law of the case doctrine,” are the different standards required in a preliminary injunction and summary judgment. The standard required for a preliminary injunction to issue is as follows:

- (e) Grounds. A restraining order or preliminary injunction may issue only upon a showing by the applicant that:
 - (e)(1) The applicant will suffer irreparable harm unless the order or injunction issues;
 - (e)(2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
 - (e)(3) The order or injunction, if issued, would not be adverse to the public interest; and
 - (e)(4) There is a *substantial likelihood that the applicant will prevail on the merits of the underlying claim*, or the case presents serious issues on the merits which should be the subject of further litigation.

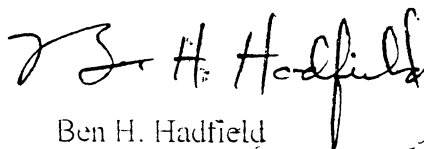
Ut. R. Civ. Pro. 65A(e) (emphasis added). By contrast, the standard that must be met in order for the Court to grant summary judgment is: “[t]he judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.*” *Ut. R. Civ. Pro.* 56(c) (emphasis added).

The Court’s ruling in 3D’s favor on its preliminary injunction motion was based on a “substantial likelihood” that 3D would prevail at trial. The case is now before the Court on a motion for summary judgment. The Court is not prepared to use the “law of the case” to bootstrap the issue of judicial estoppel and claim preclusion over the standard required by *Ut. R. Civ. Pro.* 56(c).

In conclusion, the doctrines of claim preclusion and law of the case have no application to the case at hand. Old Standard’s motion for partial summary judgment is granted on issue preclusion and judicial estoppel grounds. Like the parties in *Collins v. Sandy City Board of Adjustment*, 52 P.3d 1267, 3D “made a calculated choice to forgo . . . [their bankruptcy remedies] . . . and that the predicament in which they find themselves is of their own making.” The questions presented in this motion are complex. The disposition of this motion makes the issues presented ready for appeal. Counsel for defendant counterclaim plaintiff is requested to prepare an appropriate order.

Dated this 13 day of November, 2003.

By the Court

A handwritten signature in black ink, appearing to read "Ben H. Hadfield", is written over a circular, dashed-line stamp.

Ben H. Hadfield
District Court Judge

CERTIFICATE OF MAILING

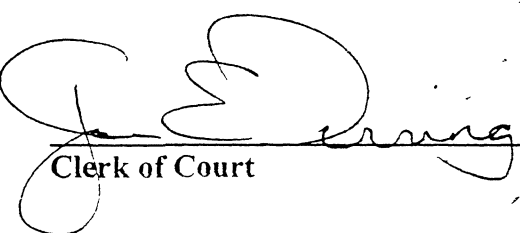
I hereby certify that on the 13th day of November, 2003, I mailed a true and correct copy of the foregoing Memorandum Decision, in the case of *3D Construction vs. Old Standard Life Insurance*, case number 030100028, as follows:

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Clerk of Court